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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

WEDNESDAY, FEBRUARY 18, 1987

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Callahan, R. V. (Brampton L) for Mr. Newman

Fish, S. A. (St. George PC) for Mr. Treleaven

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

Witnesses:

From Stikeman, Elliot:

Lederman, S. N., Legal Counsel for Ivan Fleischmann and Canadian InterCorp Ltd.

Sopinka, J., Legal Counsel for Mr. Lederman



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, February 18, 1987

The committee met at 2:03 p.m. in room 151.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: I call the committee to order. The committee requested some documents from Mr. Gillies and they have been received by the clerk of the committee. You asked for his daily journal and we have copies of that. We have had a request from Mr. Gillies that they not be made too public. After all, it is the member's private appointment journal. You asked for it and he gave it freely. I ask you to restrict use of it. If you look at it, you will see there is some pertinent information on some things that are of no consequence to anybody except Mr. Gillies. You also asked for a copy of his message file and for a copy of the notice of libel papers and we have those documents. To my knowledge, we have received all the information we asked for from Mr. Gillies when he was here yesterday.

The witness this afternoon is Sidney Lederman who is at the chair now and we are ready to proceed. The clerk will swear in the witness.

Sidney Lederman sworn.

SIDNEY LEDERMAN

Mr. Sopinka: Mr. Chairman, may I identify myself? My name is John Sopinka and I ask permission to represent not only Mr. Lederman, but also Stikeman, Elliott. Matters of law and privilege may arise. I doubt they will, but if they do it is preferable for counsel to make the submissions rather than the witness and I ask standing for that purpose. I also may ask to address a few remarks with respect to any issues of law that arise out of the evidence.

Mr. Chairman: You will both be aware that the practices of this House are fairly straightforward on the matter of counsel. The committee is pleased to receive anybody as counsel for a witness. We are somewhat restrictive in the sense that the practices of this House are that witnesses appearing before committee always have the right to counsel, but the counsel is there exclusively to advise the witness.

We have broadened that a bit in that if it were clear that counsel for a witness was able to provide a committee with further information or if he wanted to present a set of facts or an opinion, in other words, represent his client or in this case a law firm, committees are fairly loose about that. The one point we have always been rather strict about is that counsel does not retain the right to cross-examine in committee.

We will play it this way: The right of the witness to have counsel present is very clear. I ask the members of the committee to restrain themselves a bit in terms of asking questions directly to counsel. Please ask them through the witness. If it becomes apparent that counsel would like to appear as a witness himself on behalf of the law firm, that is something we

could consider. If he wanted to make a written submission, we could also consider that. Essentially, we traditionally view counsel as people who are here to advise witnesses, so there is that restriction.

Mr. Lederman, I understand you have a statement. Perhaps we can hear that and then take questions from the members.

Mr. Lederman: Yes. I have also heard there is some talk about a dungeon and that is another reason I asked Mr. Sopinka to be present.

Mr. Chairman: We hardly ever use that.

Ms. Fish: As a question of procedure, Mr. Lederman is opening with a statement. Are there copies of the statement available or can they be made available?

Mr. Chairman: If he has a copy--

Mr. Lederman: I think do have some copies.

Ms. Fish: Even if there is only one copy, Mr. Lederman, the clerk can make additional copies. If you have some additional copies, that would be helpful.

Mr. Lederman: I should add that I may not follow the statement you will have in front of you closely.

On October 27, 1986, a member of this Legislature, Mr. Phil Gillies, prepared a news release in which he made statements about our client, Mr. Ivan Fleischmann, statements Mr. Fleischmann alleges to be false and defamatory and which have caused serious harm to his reputation and business. Mr. Gillies distributed the news release to the media and the defamatory statements received widespread attention in the media.

Mr. Fleischmann thereupon retained our firm to institute a libel action against Mr. Gillies and his executive, Lyn Artmont, whose name also appeared on the news release. As a first step in the action, we prepared a notice of libel under the Libel and Slander Act complaining of the libellous statements. That statute requires that before an action for libel in a newspaper can be commenced, such a notice must be given within six weeks after notice of the alleged libel.

An articling student from our office served the notices of libel on Mr. Gillies and Ms. Artmont on November 5, 1986, by leaving copies of the notices with Ms. Artmont at her office in Queen's Park. We have an affidavit of service, sworn by the student on November 12, 1986, which sets forth the full details of service of those notices. Our firm did not, as I understand Mr. Gillies suggested yesterday, post a notice in the Queen's Park press gallery that we intended to serve the libel notices on Mr. Gillies, nor did any lady from our firm serve the notice on Mr. Gillies.

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Before serving the notices of libel, we examined the propriety of serving such documents on a member of this Legislature at his office in Queen's Park. We considered section 38 of the Legislative Assembly Act and reviewed the leading Canadian authority on parliamentary privilege, Beauchesne's Rules and Forms of the House of Commons of Canada. We concluded

that service of a court document on a member of the provincial parliament at his office in Queen's Park was lawful and not in contravention of any legislative privilege enjoyed by the member. We remain of that view and find support for our position in the opinion that the law firm of Blake, Cassels and Graydon submitted to the standing committee on procedural affairs on June 27, 1978, in the Riddell affair. It should be noted that Blake, Cassels and Graydon is also the law firm acting for Mr. Gillies and Ms. Artmont in this very libel action.

If necessary and if you deem it appropriate, with your permission I will ask that Mr. Sopinka be given an opportunity at the close of the questioning to address you further on our interpretation of a member's privilege.

Following service of the libel notices, we prepared a statement of claim, which is the court document initiating a lawsuit, and issued the statement of claim in the Supreme Court of Ontario on January 14, 1987. On January 15, 1987, we wrote to Metro Process Servers, an experienced and independent process-serving firm, instructing it to serve Mr. Gillies and Ms. Artmont at their offices in Queen's Park. The process server apparently picked up this letter and the statement of claim at our reception area in our office.

Mr. Clamp from Metro Process Servers has already testified--Mr. Patton will testify later presumably--before this committee about the events leading up to the service of the statement of claim on Mr. Gillies and Ms. Artmont on Thursday, January 22. Had we known in advance of Ms. Artmont's invitation to Mr. Clamp to serve the statement of claim while the public accounts committee was sitting, we would have instructed Mr. Clamp to decline the invitation and postpone serving the documents until Mr. Gillies and Ms. Artmont had returned to their offices. Unfortunately, unbeknownst to us, Metro Process Servers took the invitation at face value and accepted it.

On January 23, 1987, I wrote to the Speaker of this Legislature, explained the circumstances surrounding the service of Mr. Gillies and Ms. Artmont as I understood it after the fact and emphasized our regard for the sanctity of the Legislature. It should be emphasized that throughout neither Mr. Fleischmann nor our firm was aware of any arrangements between Mr. Clamp and Ms. Artmont for service of the statement of claim.

Before concluding this statement, I would like to address several specific points. First, Metro Process Servers relied in good faith on an invitation extended to it by the executive assistant to a member of this Legislature. It is unfortunate that as a result of this understanding, or perhaps misunderstanding, between Mr. Clamp and Ms. Artmont, service of the statement of claim took place in this fashion. but neither Mr. Fleischmann nor our firm was a party to this arrangement. We did not know of it until after it happened. It was a regrettable incident. We certainly had no intention of service taking place in this manner.

Second, some members of this House have suggested that the service of the statement of claim on Mr. Gillies on the very day the public accounts committee began its inquiry into the convert-to-rent matter was more than mere coincidence. I can assure the committee this was a matter of sheer coincidence. We did not know the public accounts committee had scheduled meetings in January to consider the convert-to-rent program and we certainly did not know the committee would be meeting on Thursday, January 22, to begin its inquiry into the convert-to-rent program.

Third, some questions have also been raised as to why our firm waited

until January 14, 1987, to commence a liable suit in respect of statements made on October 27, 1986. The statements made by Mr. Gillies on October 27 were published in the Toronto Sun on October 28. Under the Ontario Libel and Slander Act, an action against a newspaper must be commenced in a relatively short period of time, within three months of the publication of the libel. Accordingly, we were required to commence Mr. Fleischmann's action before January 27, 1987, to comply with this short limitation period. Our firm used the time to thoroughly investigate the matter and to ensure the accuracy of the statements set forth in the statement of claim. We also were reviewing some recent legal precedents dealing with these issues. Our instructions from our client were to proceed quickly on the matter. We do not commence lawsuits lightly and do so only if we believe there is a strong basis in fact and law for the position taken by our client.

Finally, some members have suggested that section 38 of the Legislative Assembly Act immunizes MPPs from civil suit while the House is sitting. We looked at this matter at the time of the serving of the notice of libel, and with respect, came to the conclusion that such a position is untenable.

Every citizen of this province is entitled to seek redress in the courts for injuries caused to him by the acts of members of this Legislature. The members of this Legislature do not stand above the law. Except for the extraordinary privilege that they enjoy in respect of statements that they make in the House and before committees of this House, members of this Legislature are as accountable to the courts for their conduct as any other citizen in this province.

Why should a member be fearful of subjecting his rights to the courts of this province? If he is in the right, he will prevail. It is not an act of intimidation for a citizen to seek redress from the courts of a perceived wrong committed by a member of the Legislature, and members should not be taking on a mantle of protection beyond that which is necessary for them to perform their duties. That is how our firm viewed the matter when we looked at it prior to serving the notice of libel.

I repeat that although our firm is of the view that members may be served with court documents during the term of the Legislature, we have never taken the position that it is proper or appropriate to serve any process upon a member if the service would interfere with his legislative duties. We certainly would never have authorized service in the assembly or in any committee. But we do view service of a statement of claim at a member's home or at his or her office in keeping with the responsibility that members have to ordinary citizens of this province.

I thank you for allowing me to make this statement and I am prepared to answer any questions you may have of me.

Ms. Fish: Perhaps I can begin by being very certain that I understand what has been said in your statement. In this statement and in copies of material that we have before us, a letter from yourself, sir, to Mr. Phil Gillies, I gained the impression that you gave specific instructions to Metro Process Servers regarding the location or some other matters on service.

Mr. Lederman: May I put to the committee a letter that was left with the statement of claim and the instructions to Metro Process Servers that was prepared by an associate in the firm, David Brown? Perhaps I can distribute those.

Ms. Fish: While that is coming around, is that the January 15 letter you made reference to?

Mr. Lederman: Yes.

Ms. Fish: To the best of your knowledge, that letter was received by or picked up by Metro Process Servers when it collected the material for service?

Mr. Lederman: As I understand it, that was the only communication with Metro Process Servers about the service of the statement of claim. Yes, they did pick that up along with the statement of claim at the time.

Ms. Fish: I note the wording in this letter, the second paragraph: "Phil Gillies is an MPP and can be served at Queen's Park. Lyn Artmont is his executive assistant and can be served in the same office." A quick read of the letter does not seem to indicate that you would wish them to be served at the office. Did you interpret that paragraph as direction to serve them in the office?

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Mr. Lederman: That is my interpretation of the letter. It certainly was our intention that it was where the service was to take place. Indeed, it seems as if that is what Mr. Clamp took from the letter as well because, as I understand from his evidence and, indeed, his affidavit, that is where he made his contact with Ms. Artmont.

Ms. Fish: Regrettably, I think I must disagree with that, since in questioning this morning he repeated several times that he had no instruction regarding service whatsoever from you or your firm, that it was entirely a matter of his choice as to location and timing.

Mr. Lederman: I do not want to get into an argument.

Ms. Fish: Nor am I carrying a brief. Since you chose to comment upon content of his affidavit, I share with you content of his testimony before the committee.

Mr. Lederman: I just raise the simple fact that his initial contact with Ms. Artmont or Mr. Gillies was with Ms. Artmont at her office.

Ms. Fish: I appreciate that. You did indicate repeatedly that this was to make an arrangement for serve and repeated under questioning here that he chose the time and location of service, and no one else, and that he had no instructions from you with respect to location and service.

Again, I am not asking you to respond to him, I simply want to understand very clearly that this is the letter you believe clearly instructed that service occurred within the member's office.

Mr. Lederman: The letter is there, and it is my interpretation that that is what Mr. Clamp referred to.

Ms. Fish: To the best of your knowledge, the process servers had that letter when they took the material for service.

Mr. Lederman: There is no question about that.

Ms. Fish: Excuse me just a moment. I take it from page 2 of your statement that the statement of claim was prepared on January 14, 1987.

Mr. Lederman: But I am sure there were a number of drafts prepared. It was issued on January 14. That is the act of taking it through the court registry and having it formally issued by the registrar.

Ms. Fish: Did you, or anyone from your office, give Mr. Clamp or anyone from Metro Process Servers any indication of the timing of service?

Mr. Lederman: No. Again, the only communication our firm had with Mr. Clamp about timing, the nature of service--indeed, all aspects of services--is really contained in the January 15 letter that I just produced.

Ms. Fish: At the bottom of page 2, and again on page 3, you make reference to a purported invitation by Ms. Artmont respecting the service. Do you draw that inference from anything other than Mr. Clamp's statement of claim?

Mr. Lederman: Mr. Clamp's statement of claim?

Ms. Fish: Yes. Pardon me, his affidavit.

Mr. Lederman: Yes, we draw that because after we learned of the incident, and we were receiving a great number of calls about the incident, we tried to find out what happened. We immediately got in touch with Mr. Clamp. We had him come down to our office to tell us the circumstances of the service. After he told us, we then prepared an affidavit, which he swore. So yes, I take it from that.

Ms. Fish: Are you aware that Mr. Clamp indicated this morning that the time and location were selected entirely by himself based on convenience of the time for his workers?

Mr. Lederman: I did not hear his testimony this morning, so I am not aware of it.

Ms. Fish: Are you familiar with the affidavit filed by Ms. Artmont?

Mr. Lederman: Yes. I have read it.

Ms. Fish: Do you feel there is anything in there that would suggest that she had invited the service?

Mr. Lederman: My problem, Ms. Fish, is that I was not a party to, nor was I aware of, any of the circumstances surrounding the discussions that took place between Mr. Clamp and Ms. Artmont. I cannot really comment on the different versions that come out of the affidavits.

Ms. Fish: In lieu of that, do you consider that it is possible that there was no invitation?

Mr. Callahan: How can he answer that, Mr. Chairman?

Ms. Fish: He can answer it because he has twice in the course of his statement made reference to an invitation issue, and he has now declined comment because he has noted the fact to clearly contradict the affidavit.

Mr. Lederman: Ms. Fish, I do not know if it is appropriate for me to comment on credibility of witnesses. If you wish me to, I will be prepared to do so, as to why I would come to a conclusion preferring the evidence of Mr. Clamp over that of Ms. Artmont. As I have indicated in the written statement but did not state orally, Mr. Clamp has no personal interest in this matter whatsoever. He has no reason to state a version of events that is not truthful and honest. On the other hand, Ms. Artmont does have some interest and may have some interest in exploiting the incident. But I think it is rather unfair to put that question to me since--

Mr. Chairman: I will just intervene here for a second. We have walked carefully for a couple of days, and I suspect we will walk carefully for a little while longer.

We have conflicting affidavits and conflicting testimony. It is the job of this committee to make up its own mind which of the affidavits or which description of the facts it prefers to accept. It is a challenge, in going through this process, to do so without using language that might cast aspersions on somebody else, damage reputations or infer that someone had perjured himself or herself in some way. You are doing a good job so far. Keep it up.

Ms. Fish: I always want to be very careful about the line that I walk.

Mr. Chairman: That is right. This is why I am here.

Ms. Fish: Particularly when I face such eminently qualified counsel in such matters.

Mr. Chairman: Watch it. This is a sign--

Ms. Fish: That is a compliment.

Ms. Fish: Can you tell me, Mr. Lederman, how often you use Metro Process Servers?

Mr. Lederman: Again, it was Mr. Brown who retained Metro, but I think we use it with some regularity. As I understand it, it has been in the business for about a decade, and I think our firm uses it with considerable frequency. As to the number of occasions, I cannot tell you, but certainly very regularly for the purpose of serving initiating court documents and subpoenas.

Mr. Sterling: You do not think that, as a result of that, he might favour your position on a particular matter?

Mr. Lederman: No. I am sorry, that he would favour our position?

Mr. Sterling: Yes. You were claiming that there is no interest--

Mr. Chairman: You are best advised to ignore that improper supplementary question and allow Ms. Fish to ask her pertinent main questions.

Ms. Fish: I am prepared to yield a supplementary if my colleague wishes to put a supplementary.

Mr. Chairman: I know you are.

Mr. Lederman: I am prepared to answer it to the best of my knowledge.

Mr. Sterling: You do not have to.

Ms. Fish: You indicate in the statement--bear with me just a moment, I am again on the front page--"Our firm did not...post a notice in the Queen's Park press gallery." Were you aware that a notice was posted in the press gallery indicating intention to serve the libel notice?

Mr. Lederman: No. The only reason I even made reference to that is that I understand Mr. Gillies gave some evidence earlier in this proceeding indicating that there was some notice posted. But no, I was not aware of it.

Ms. Fish: You were not aware the notice was posted?

Mr. Lederman: I do not know whether, in fact, that is so. I certainly was not aware of anything of that nature until Mr. Gillies made reference to it in his evidence.

Ms. Fish: So you were not aware that a notice was posted and have no knowledge of who might have posted it?

Mr. Lederman: If it was posted, that is correct. Except, I can tell you, Ms. Fish, that we did not do it, if it was done, nor did we instruct anyone to do it.

Ms. Fish: Okay, thank you. I think I will stop there for the moment.

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Mr. Martel: I do not have a lot of questions. There is a difference between the two affidavits. One person is saying he talked to someone on the 19th; the other person is saying he talked to someone on the 20th. I tried to find out this morning from Mr. Clamp whether there is a process, when they pick up the documents from your firm, of their having to sign for the date they might have received the documents on the instructions from your firm.

Mr. Lederman: No. As I understand it, we do not have a process whereby they actually sign that they have picked up the material. That letter was prepared on or about the 15th, and Metro Process Servers would have been contacted by the secretary to ask that someone from Metro come down and pick it up. We normally do not send statements of claim through the mail. As we understand, it would have been picked up on the 15th or 16th, but we certainly do not have a record indicating exactly when it was picked up at the reception area.

Mr. Martel: It would have been a big help to know at least that fact.

Mr. Lederman: I understand there is some discrepancy between Ms. Artmont and Mr. Clamp as to when a phone call was made. I am aware of that discrepancy, but I do not think we can assist you on that. I do not know whether much turns on that particular discrepancy, but we certainly cannot provide any assistance.

Mr. Martel: The thing that is mystifying me is why Ms. Artmont would wait three and a half days to tell her boss that a law firm is serving him with a suit. As one who has gone through the rigours on two or three occasions over 20 years, it is rather important that you know right away who is after you.

Mr. Lederman: I would have thought that having been served with a notice of libel would cause an individual to get some legal advice as to what is a notice of libel and quickly learn that it is preparatory to an action being commenced and being served with a statement of claim.

I do not know whether it is such an astonishing fact, after having been served with a notice of libel, to expect at some point to receive a statement of claim, unless one is of the view that notices of libel are served without any intention of commencing an action.

Mr. Martel: That is one of the concerns members have. To me, your statement on page 5 is almost cavalier in a fashion. It is one thing to say, "Why should a member be fearful of subjecting his rights to the courts of this province? If he is right, he will prevail," but one has to understand that he is embroiled in that for three years and that costs are going to run \$20,000 or \$30,000 over that time. No one wants to hide behind something called immunity, but those are legitimate reasons for being fearful and not wanting to get embroiled.

Mr. Lederman: But there are no fears other than the normal fears that other citizens have about lawsuits. If there is an improper basis for commencing a lawsuit, the courts can deal with that in terms of solicitor-client costs. There are means of redress for frivolous actions in the courts.

As to whether it interferes with the responsibilities and duties of a member of the Legislature, again, it is our view that this process does not. If further elaboration is needed on our interpretation, I really would prefer that my counsel make those submissions as to why we do interpret the extent of a member's privilege in this fashion.

Mr. Chairman: You have mentioned this on a couple of occasions now. We would be very pleased to see any kind of written submission of your argument about a member's privilege and the theoretical application of all of that. We have a number of legal opinions on the matter already, and we would certainly be happy to receive any that you have.

That is not precisely why we are here right now, but it is of interest to us.

Mr. Martel: No. While it is not part of what we are here to find out, certainly if one looks at page 5, it is a large section of the presentation made. I want to refer to the letter in a few moments too, because I think there are some misconceptions by the legal people as to what it is like. It can detain or prevent you from working.

I recall a lawsuit where I was sued and served with the papers. Ultimately, it cost a finance company \$500,000 to repair 26 homes. I was frightened, to say the least, in proceeding. None the less, it had to be done. You make a statement, "We do these things and there is nothing to worry about," but there is something to worry about when you are a member of the Legislature. It is very serious because it can say you have to pull back even though you think you are right.

Mr. Lederman: On the other hand, perhaps some thought should be given to the citizens who may be bringing the proceeding. Consider this example: What if a wife wanted to bring a proceeding against her husband, an MPP, for interim maintenance or interim custody? What happens in that situation?

Mr. Martel: I am saying there are situations that are vastly different. I am talking about when you start to sue somebody for slander, which is what your case is here. I thought the way the statement was worded was pretty Lucy-Goosey, frankly.

Mr. Lederman: This was not intended to be a submission of law. This was just a statement to this committee. If this committee is inviting us to submit a very learned--

Mr. Martel: We just happened to be in Ottawa on Friday morning. My colleague the chairman, Mr. Morin, and myself were meeting with people at the House of Commons with respect to security, but we got into this whole discussion. You cannot serve a paper at the House of Commons, whether it be in a member's office or the precincts of any of five buildings. You would not get by the door to serve those papers. In fact, the joke around Ottawa is--what is the name of the street?

Mr. Chairman: I think it is just at the Sparks Street mall. They have a little spot.

Mr. Martel: Yes, they have a little spot there. They nail you when you come by, but do not try to get in the building.

Mr. Sopinka: I do not want to get into this debate, but Mr. Kellock gave a very learned opinion. If you read that, he explains that the House of Commons inherited the privileges from the imperial Parliament but the provincial legislatures did not. That might not be right, but that happens to be the law. With respect, I think Mr. Lederman can be asked about what we found the law to be when we looked at it, because we acted on the basis of what the law was. If the law should be different--and you may be right; so be it--but I do not think we can be criticized in any way because we did not comply with what the law should be. We looked at the law as it was and as it was expressed in Mr. Kellock's opinion and acted accordingly. I think the questioning of Mr. Lederman should be on that basis.

Mr. Chairman: Yes. Members of the committee may not be familiar with this, but in another life, when we were called the standing committee on procedural affairs, we paid Mr. Kellock in the order of \$15,000, I think, for a legal opinion. After he gave it to us, we promptly set it aside and paid no attention to it.

Mr. Sopinka: With a strong dissent.

Mr. Martel: I only draw that point because it is part of the instructions in the letter to Metro Process Servers. I just make the point, the comparison, having been in Ottawa only Friday of last week and having met with the Sergeant at Arms and his entire staff--I think they were speaking on behalf of Mr. Speaker--that you would not be able to make the assumption that is here. I am not learned in the law by any stretch of the imagination, but it is a vastly different situation there. You just would not be able to do it.

Mr. Sopinka: I can attest to the fact that there are other disadvantages to being in Ottawa.

Mr. Martel: It gets cold.

Interjection.

Mr. Martel: I did not want to make reference to some of your other employment opportunities. Those are the only comments I want to make. That whole matter is going to have to be reviewed by us, whether or not they can come in here, because it has to be cleared up so that everyone knows the ground rules we play by.

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Mr. Callahan: The letter of intent is a condition, I gather, precedent to commencing a libel action.

Mr. Lederman: Notice of libel.

Mr. Callahan: Yes. In fact, what that does is to give people who have it served upon them the opportunity to retract a statement and if they do, that is the end of it.

Mr. Lederman: Yes, that is correct.

Mr. Callahan: If they do not retract it, then are they able at any later stage to retract it, or at that point have they put themselves in a position of being liable for damages?

Mr. Lederman: They can at a later time issue an apology. That would go to the question of mitigation. If, after a notice of libel is served, within a period of time they issue a retraction or an apology, it would limit the extent of damages that a plaintiff could obtain for defamation to the extent of his actual economic loss, his pecuniary loss, and not damage to his reputation.

Mr. Callahan: We have heard evidence, I believe from Ms. Artmont; I believe she indicated that the common perception around this place is that notice--what do you call it?

Mr. Lederman: Notice of libel.

Mr. Chairman: You will have to play fair with Mr. Callahan. He is a lawyer so you will have to explain these legal things to him.

Mr. Callahan: I have never handled that kind of stuff. In any event, the common perception of notice of libel that Ms. Artmont would have us understand around here is that when these notices are served, people ignore them.

Mr. Lederman: I do not know if that is Ms. Artmont's perception. We certainly do not view a notice of libel that way. It is a very serious document. It is mandated by the statute. The relevant section of the Libel and Slander Act says you cannot commence an action for libel.

Mr. Callahan: I think it is section 8, is it not? In any event I do not think it is of tremendous--

Mr. Lederman: I have a copy of it. It makes it clear that is a condition precedent. In other words, if you intend to commence an action for libel with respect to a libel in a newspaper or a broadcast, you must deliver a notice of libel setting out the matter complained about, and it must be served within six weeks of the libel or when it came to your attention.

Mr. Callahan: Would you agree that no responsible law firm would issue these and just sort of forget about them?

Mr. Lederman: I would have thought that a law firm would take the matter seriously. I would agree that a responsible law firm looks into the matter, and if it decides to deliver a notice of libel, it believes at that point, on the circumstances as it has them, that there is a basis for making a complaint about the statement. That is, it is a statement in these circumstances made outside of the Legislature and that in terms of what we know it is defamatory. The complaint is made in a formal fashion by the notice of libel. The notice of libel has the name of our law firm on it.

Mr. Callahan: That is what I was going to get into.

Mr. Lederman: It makes it clear that it is a notice served pursuant to the Libel and Slander Act. I would have thought that a relatively sophisticated person receiving that kind of document might inquire as to what this is all about, what is the authority for the serving of this document and what is its significance.

Mr. Callahan: I was going to get to that. Once you start the action the process is that your firm is on record as solicitors of record. Even though there is no technical "on record" by serving the libel, your name is on the back of that document.

In the event that it was being withdrawn or not proceeded with--let us say your client came in and said, "I do not wish to proceed with this any further"--would you take any other steps to notify that person that the matter had been withdrawn?

Mr. Lederman: I guess it depends on the instructions of the client. As I say, normally I think what an individual who receives a notice such as that does is to obtain legal advice. The legal advice would be that there is a limitation period of three months in which that action can be commenced. If that three-month period passes and the action has not been commenced, it is statute barred.

Mr. Callahan: If the three months passes and you or any other law firm does not do anything about it, you are in deep trouble.

Mr. Lederman: Yes. I think it is called negligence. Lawyers are always fearful of limitation periods passing and a client losing a cause of action as a result of a lawyer's negligence in not abiding by a limitation period. That limitation period is a very short limitation period as causes of action go. Most limitation periods are in the order of six years for most causes of action.

Mr. Callahan: There is also a limitation period on service of the claim after its issuance. Is there not?

Mr. Lederman: There is a six-month limitation period on service of the statement of claim.

Mr. Callahan: You could not get that extended without some very significant reasons for extending it.

Mr. Lederman: You can get that extended but you would require a court order.

Mr. Callahan: You would have to show, for some reason, you could not serve it within that period.

Mr. Lederman: You would have to give an explanation as to why you did not serve it within that time.

Mr. Callahan: I gather from your letter--and there seems to be a controversy here over what parts of this building are places where you do not serve anything--at least your law firm considers that the offices of a member of provincial parliament, be they in this building or wherever, are not off limits in terms of serving documents.

Mr. Lederman: Yes. That was our view when we looked at the matter.

Mr. Callahan: Have you ever had an opportunity to canvass that with any of your other legal brethren as to whether that is their belief as well?

Mr. Lederman: It is certainly Mr. Kellock's belief in the very thorough opinion that he provided to this committee. He came to the conclusion in that opinion that it is quite appropriate to serve--and in that case, it was a notice of libel--at the office of an MPP.

Mr. Callahan: Clearly you and any responsible law firm would be aware of the fact that if they served a civil process in the face of let us start with a civil court, that could very easily be grounds for contempt of court.

Mr. Lederman: I am sorry. If they served?

Mr. Callahan: If a process server went into a court of law and served a document while the court was sitting, that could very easily be considered contempt of court.

Mr. Lederman: It could be. Yes.

Mr. Callahan: I think you have already testified that you would in no way, shape or form have countenanced the service of a document before this Legislative Assembly, which is the highest court in the land, because of that same concern.

Mr. Lederman: Yes. I attempted to make that clear to this committee that we would never countenance service of a court document in the assembly or, indeed, in the committee. That is why I said that, had Mr. Clamp called us and said: "Ms. Artmont suggested this arrangement, that is, that I go to the public accounts committee, room 151. Is that all right?," or had we learned of it in any way, we would have said, "Absolutely not."

Mr. Callahan: Do you also use or have you used other process service besides Metro Process Servers?

Mr. Lederman: It is really left to the discretion of every litigation lawyer in the firm. We do not have a policy in our litigation group that only one process serving agency be used. It really is left to the discretion of the individual lawyer.

Mr. Callahan: There is a process whereby you can leave it with the sheriff's office and a public officer of the sheriff will serve it. I understand from my experience in my past life that they are very busy and they

may not give you quite as prompt service.

Mr. Lederman: That is the problem. I do not think most of the major law firms now make use of the sheriff's office. It is cheaper but there is no reliability as to the time. It could take three or four weeks, or even longer. You will notice that even here, we have no set policy as to who we utilize for purposes of service. With respect to the notice of libel, we made use of an articling student. With respect to serving the statement of claim, we made use of Metro Process Servers.

Mr. Callahan: When the affidavit was prepared for Mr. Clamp, we understand it was done the same evening as the incident about which we are all here. Were you present when the affidavit was--

Mr. Lederman: I was there because I certainly heard of the furor that took place in the House over this incident late that afternoon. I was most upset, to say the least, to hear there was an emergency debate over the circumstances of a service. We knew nothing about the circumstances of the service.

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Our immediate reaction was to find who the appropriate person was at Metro Process Servers. We contacted Mr. Clamp. He came down immediately. He told us his understanding of what had happened. We had it reduced to an affidavit form at that time and then proceeded to come--because the press was inundating us with this--to Queen's Park that evening. It must have been around six o'clock. I had Mr. Clamp and his affidavit. The press there had an interview with myself and Mr. Clamp.

Mr. Callahan: I am asking you to reflect back on this. When Mr. Clamp recounted to you what had taken place, did it come out fairly clearly? There was not any need to drag it out of him?

Mr. Lederman: His recollection was sharp. He was very clear and precise as to the conversation he had with Ms. Artmont. The affidavit was put together very quickly on that basis. That is why I had no qualms about immediately coming up to Queen's Park with Mr. Clamp in hand and letting Mr. Clamp tell his story.

Mr. Callahan: As a final question, I gather that the contacting of Mr. Clamp and the subsequent processing of this affidavit were done totally on the initiative of your law firm.

Mr. Lederman: Totally.

Mr. Callahan: Without any instructions of interference from anyone else?

Mr. Lederman: Absolutely.

Mr. Warner: Thank you for appearing here this afternoon. We appreciate it. You have been very helpful in providing some information about libel and slander in your statement. I want to clear up one little detail from what you mentioned before. There is a six-week period within which someone must serve a notice of libel from the time they--

Mr. Lederman: Become aware of the libel.

Mr. Warner: After that, if you go beyond the six weeks, then you cannot--

Mr. Lederman: You have lost your right of action. It is with respect to a libel in a newspaper or broadcast. It is to provide an opportunity for the party who receives the notice to issue a retraction or to apologize. If a person, a newspaper or medium chooses to do so, it will automatically limit the extent of the damages that the plaintiff, if he then commences an action, can obtain from a court. It does provide an opportunity for someone to check his facts and decide either to issue an apology or not.

Mr. Warner: I have experienced one of these in the past decade and I think the appropriate word would be "grovel."

Mr. Lederman: I do not think the act uses that word.

Mr. Martel: It is called "choking on the feathers."

Mr. Warner: That scared the living daylights out of me. At any rate, it caused me to go back over the material. In fact, I had used some intemperate language, which was corrected. It saved me from going to court.

The three months that you talk about though, is not from after the six weeks but from the moment of the libel. Is that correct?

Mr. Lederman: Exactly. Yes.

Mr. Callahan: The moment it comes to your notice.

Mr. Lederman: Yes.

Mr. Warner: In this case, we are looking at January 27. We know, by looking at a calendar, that there are two or three working days from when it was actually served until January 27. You were near the expiry on this.

Mr. Lederman: That is a good point. The period stops--that is, the three-month period--when you issue a statement of claim. You have to issue the statement of claim within the three-month period, not necessarily have it served within that period.

Mr. Warner: As long as you issue it. When did you issue it?

Mr. Lederman: We issued it on January 14. Our practice is not to hold back. Once we issue it, we then move on to the next step and pass it on for service. The letter is dated January 15.

Interjection

Mr. Lederman: We satisfied the limitation period by issuing the statement of claim on January 14.

Mr. Martel: Mr. Chairman, could I ask for clarification. If you go down that statement, it says, "Accordingly, we were required to commence Mr. Fleischmann's action before January 27"--

Mr. Lederman: Commence it, yes.

Mr. Warner: You do not have to notify them?

Mr. Lederman: No, commencement is different from notifying or serving the document. In other words, as Mr. Callahan pointed out, you commence the action by having it issued. Theoretically, according to the rules of court, you could wait; you have another six months to serve the statement of claim.

It may come to the party's attention in some other fashion, but in terms of actually serving the document, you have a further six months to do that if you so choose. However, if you are anxious to get on with the matter and get the proceeding under way nothing is going to happen until you serve the statement of claim. You then receive a statement of defence and proceed with it.

Our instructions from our client were that he had been seriously harmed and wanted to proceed with the lawsuit. Those were his instructions to us--to get on with it--and they are appropriate instructions.

Mr. Warner: Your firm does quite a bit of work in libel and slander.

Mr. Lederman: Yes.

Mr. Warner: From your experience over the years, what is the usual kind of reaction when individuals receive a notice of libel.

Mr. Lederman: I can tell you the individual reaction of members of provincial parliament. It is usually outrage. I do not know. I think it depends on who the party is as to what their reaction is. Sometimes it is outrage, sometimes it is expected. We hope they take the responsibility and acknowledge it, but it is like any other personal wrong to an individual who alleges that a personal wrong has been committed and commences an action.

People are upset generally when they are a defendant in a lawsuit. That is a natural reaction. However, we have a method of dispute resolution in this society. One party feels he has been grievously harmed and suffered a considerable loss. When another party feels there is nothing to that or is unsure he suffered the loss, it is a matter for a court to decide.

Mr. Warner: But there is normally a response from the person involved?

Mr. Lederman: Yes.

Mr. Warner: Was there any response from Mr. Gillies from November 5 until January 22?

Mr. Lederman: The only response I was aware of was a response in the press. There certainly was no response to us in any formal way. I am not sure whether it was him or Ms. Artmont, but there was a statement in the press. In fact, it is now referred to in the statement of claim. He made it clear they were not going to issue any--and they used a derogatory term, "blank" apology. I think it was "f-----".

Mr. Chairman: I will tell you later, David.

Mr. Lederman: It is certainly referred to in the statement of claim that was delivered in January.

Mr. Warner: Had your firm served notice of libel on Mr. Gillies on any other occasion?

Mr. Lederman: Not that I am aware of.

Mr. Warner: If I had received a notice of libel, what are some of the basic things a lawyer would advise me as a result of having received this notice as to what I could expect to occur next?

Mr. Lederman: First of all, I think a lawyer would have advised Mr. Gillies or Ms. Artmont what the document was, what its purpose was. They would have been told that it is required under the Libel and Slander Act for Mr. Fleischmann to do this before he commences an action, that if he is serious about this matter, he must commence that action within three months, that there are certain obligations that flow from having received the notice of libel, that they should review their facts very carefully, that if in reviewing those facts they think there may be some problem with those facts, they have an opportunity to issue a retraction or qualified retraction or apology, that this would serve to mitigate or lessen any possible claim the plaintiff might have, and that if they choose not to do so and want to stick by the position they have taken in the statement, here is what the exposure is.

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Mr. Warner: Would it be normal to offer some educated guesses to quantify the damage that is possible?

Mr. Lederman: Yes. One might ask one's lawyer what has been the range of damages given by Canadian courts with respect to allegations that are substantiated. If they are able to prove that the statement was defamatory and if the defendant cannot succeed in any defences, namely, that the statements are true or that there is an absolute privilege or a qualified privilege, or that it is fair comment, yes, I think it is quite appropriate for the lawyer to review with his client what the exposure is and he would have regard to what Canadian courts have given in these situations in the past.

Mr. Warner: On this particular notice of libel, while you could not come up with a precise figure, would it be reasonable to assume that it would be sizeable, that we are talking big money here?

Mr. Lederman: I would think so because, and this is my view, if one reads that news release, the seriousness of the comment is quite apparent. You do not require a very subtle interpretation to find out where the defamation is, and if it is false, how it will hurt. I think that becomes very clear and apparent and the extent of the damage becomes clear and apparent, and this can go to the very heart of someone's business.

Mr. Warner: You would also assume, from clients you have had who have received notices of libel, that it would be reasonable that they would seek out advice as to how to proceed and would take that advice seriously.

Mr. Lederman: I would have thought so. The notice of libel has the name of our firm on it; it usually has the name of a law firm on it. It is styled in the Supreme Court of Ontario and it refers to the Libel and Slander Act. I think the prudent course of conduct for anyone receiving that kind of document would be to get some advice.

Mr. Sterling: When I first read your statement on page 4, point (c), where you said, "Accordingly, we were required to commence Mr. Fleischmann's action before January 27, 1987, to comply with this short limitation period," I wanted to ask whether "commence" equalled "service." You have confirmed it

does not, so you had until maybe July 1987, six months after the issuance of the statement of claim. I am concerned that the statement is a bit misleading.

Mr. Lederman: I thought you would have understood that "commence" means "issue." Let me also make it clear--

Mr. Callahan: He did indicate that he could have waited for six months but that his instructions were to get on with it quickly, and their purpose is to serve it quickly.

Mr. Lederman: I want to make one thing clear on that matter. Lawyers are always, and should be, concerned about time periods, not only limitation periods in terms of commencing an action but also time periods under the rules of practice for serving documents. If there is no reason to delay and worry that you might miss some period down the road, you might as well get on with it. Those were our instructions in any event.

Mr. Sterling: Notwithstanding that, your firm did investigate the problem of service of a member and considered section 38 of the Legislative Assembly Act. I presume you also considered paragraph 45(1)2 of the Legislative Assembly Act. If that be the case, would it not have been cleaner for your firm, on behalf of Mr. Fleischmann, to wait at least until the standing committee on public accounts had completed its investigation of the Huang and Danczkay affair?

Mr. Lederman: I want to make it clear again that we certainly did not know that any investigation was taking place. We did not know the public accounts committee was meeting in January on this matter. We had no knowledge of that matter proceeding.

Mr. Sterling: Maybe you should have known. The other thing that bothers me is that you were aware there is a service problem when you are dealing with an MPP and that there are certain rules that limit the rights of someone to serve an MPP with a statement of claim.

Mr. Lederman: I have given our interpretation.

Mr. Sterling: Yes. Your interpretation is that you cannot serve it in a committee room or in the Legislative Assembly chamber. If there was this concern about it, why would you then hire an agent to come and do your work?

Mr. Lederman: I guess our problem was that, at least from press accounts, Mr. Gillies was not being very pleasant about this whole affair. When we saw that item in the press where it was indicated he was not going to deliver any f---ing apology, we did not want to get involved personally in having to present documents to him. We thought we would leave that to a professional firm that does it all the time. We did not know whether he might try to evade service or anything like that; we just did not want to have to deal with that aspect of it. We were of the view that by giving it to a process server who had been in the business for some time, it would attend to serving the document at his office so that we could get on with the lawsuit and that would be the end of it.

Mr. Sterling: Even your letter of instructions to Metro Process Servers could be interpreted in a number of ways. The second paragraph says, "Phil Gillies is an MPP and can be served at Queen's Park." It does not say he can only be served in his office.

Mr. Lederman: I am aware of what that sentence says. The second sentence goes on to indicate that Lyn Artmont is his executive assistant and can be served in the same office. It was certainly our intention that this be the communication to the process server. If you just look at one sentence, you might say he had a different interpretation of it, but as far as I know, he was not misled by that because the first thing he did was to make contact with Ms. Artmont at her office, and from there the matter went off because of the communication matter between Mr. Clamp and Ms. Artmont.

Mr. Sterling: I can read that a number of ways and I do not think it is clear. For instance, you did not say in your letter that he cannot be served in committee rooms or in the Legislative Assembly.

Mr. Lederman: You are right. The letter did not go on to explain with care that it cannot be served anywhere other than his office, but it seems somewhat academic because I take it that Mr. Clamp's initial reaction to the letter was to go ahead and make some contact with Mr. Gillies and Ms. Artmont at their office. He never got beyond the stage by attempting to effect service anywhere in Queen's Park other than the office because what happened was his trying to proceed on the basis of an arrangement he thought he had with Ms. Artmont.

Mr. Sterling: Do you take responsibility for the actions of Metro Process Servers?

Mr. Lederman: We have no special connection with Metro Process Servers.

Mr. Sterling: Certainly they were your agents in this matter.

Mr. Lederman: They are independent agents. They are agents in the sense that we enter into a contract with them. If they go ahead and effect a service, we get a bill from them and we pay that bill.

Mr. Sterling: With these instructions, do you feel they properly represented you.

Mr. Lederman: I think they absolutely represented us properly. They made contact with Ms. Artmont and Mr. Gillies. I cannot comment on whatever the arrangement was thereafter and why in the world Mr. Patton wound up in that particular room on January 22. Had it proceeded in the fashion whereby Mr. Clamp arranged with Ms. Artmont for Mr. Clamp to appear at Mr. Gillies's office at a certain time and hand them the statement of claim, then I think Metro Process Servers fulfilled the mandate given to it.

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Mr. Sterling: I do not think you can have it both ways. Either they are your agents or they are not your agents.

Mr. Lederman: They are not our agents to do anything they want. As I understand it, what happened here was that he did not effect service anywhere in Queen's Park on his own interpretation or his own whim; he did it because he thought it was a satisfactory arrangement he had with Ms. Artmont.

Ms. Fish: That is in direct contradiction to the testimony Mr. Clamp

gave this morning under oath. He clearly indicated that the selection of the time and the place was entirely his.

Mr. Morin: Was entirely what?

Ms. Fish: His.

Mr. Chairman: That may be interpreted several different ways and when we get to the point where we debate how we all see this, we will all have a chance to do that.

Ms. Fish: I appreciate that. I simply put it forward because there are, even on the face of not knowing this morning's testimony, sworn affidavits that conflict, in addition to testimony.

Mr. Chairman: Yes.

Ms. Fish: I simply ask that everyone, those questioning and those responding, be mindful of that in the selection of words they use.

Mr. Chairman: Yes.

Mr. Sterling: In terms of this agency relationship, I believe your lawyers from Stikeman, Elliott were here yesterday morning when the Clerk of the House and the Speaker were giving their testimony. The Clerk said that in his view there had been a breach of privilege or a breach in terms of the service of that document in this room. Who is responsible?

Mr. Lederman: I guess that is a question this committee has to decide. I have told you our involvement in this matter. I have given you full details of it. Mr. Clamp has indicated how it all took place in this room. I think you have to sort out these issues of credibility as to why the service took place in this room.

Mr. Sterling: Do you think there is any duty on the defendant in a lawsuit to perfect service? Is there any duty on Ms. Artmont or Mr. Gillies to make certain your statement of claim is served on them properly?

Mr. Lederman: No. If any defendant--let us not talk about an MPP. If a party chooses to evade service, then there is an opportunity to go to the court and get some kind of court order for substituted service.

Mr. Sterling: There is no evidence that Mr. Gillies or Ms. Artmont tried to evade service.

Mr. Lederman: As I understand Mr. Clamp, he thought there was co-operation on their part. He thought he came here pursuant to some arrangement.

I have just one other point. If this were a matter of real concern at the time Mr. Clamp called Ms. Artmont, and it is a matter of importance in terms of the privilege that some members may view they have, there is no reason why that could not have been made clear to Mr. Clamp on the telephone as well.

Mr. Sterling: His evidence was that he was not serving anything other than some papers. He did not say, "statement of claim."

Mr. Lederman: He said "legal papers." The only legal paper that follows from a notice of libel is a statement of claim.

Mr. Sterling: Ms. Artmont should know that?

Mr. Lederman: Ms. Artmont or Mr. Gillies should have got some advice.

Mr. Chairman: I am going to interject here for a moment. I am not happy when members argue with a witness. Ask him questions. You do not have to accept his answers. All you have to do is listen to his answers.

Mr. Sterling: You were the instigator of the lawsuit on instructions of Mr. Fleischmann. You gave instructions to Metro Process Servers to serve Mr. Gillies and Ms. Artmont. Your letter, whether adequate or inadequate, or understood or not understood by Mr. Clamp and the process server, has resulted in somebody being served in here.

Mr. Lederman: I think I would have to disagree with you, Mr. Sterling. That was not the result of why this person was served here.

Mr. Sterling: You think he was lured into this building?

Mr. Lederman: I do not know why he was here, but it certainly arises out of discussions he had with Ms. Artmont. It was either an understanding that he clearly had or a misunderstanding that existed between the two of them.

Mr. Sterling: So you do not believe your firm, Mr. Brown or yourself has any responsibility in this at all.

Mr. Lederman: No.

Mr. Villeneuve: You may or may not have heard Mr. Clamp's testimony this morning. On page 2, in the last sentence you state, "Had we known in advance of Ms. Artmont's invitation to Mr. Clamp to serve the statement of claim while the public accounts committee was sitting...." I think the word "invitation" is very open to a number of interpretations. The way I read this, Ms. Artmont lured Mr. Clamp here. Do you feel that way?

Mr. Lederman: I do not know because I have not heard and I have not seen the witnesses. You have had the benefit. I am not here to try to decide an issue of credibility. It may well be that they are both credible--I do not know--and that what you really have is a misunderstanding or a miscommunication. On the other hand, maybe there is a real issue of credibility. I cannot really assist in sorting out those issues other than by becoming an advocate and arguing one position over the other on the basis of which makes sense.

Mr. Villeneuve: This is your statement?

Mr. Lederman: Yes, it is a statement I presented to this committee.

Mr. Villeneuve: The word "invitation," in your opinion--how did you arrive at it?

Mr. Lederman: I arrived at that because of my understanding of the circumstances from Mr. Clamp, particularly when I met with him when events were fresh on January 22 and had the affidavit prepared.

Mr. Villeneuve: So you are prepared to stay with "invitation"?

Mr. Lederman: I have to stay with Mr. Clamp's version. That was my interpretation on the basis of how he explained the events to me on January 22 when he swore the affidavit.

Mr. Villeneuve: I am not learned in the law. What other process could have been utilized to serve Artmont and Gillies?

Mr. Lederman: It depends on how one interprets section 38 of the Legislative Assembly Act. If you give it the wide interpretation that some members might, you cannot serve while the House is in session or 20 days before or 20 days thereafter. That is one issue. Whether you interpret the phrase "arrest, attention or molestation for any cause...of a civil nature," to mean a statement of claim, you could not serve him at his home or anywhere while the term of the Legislature is at hand or 20 days before or 20 days thereafter.

On the other hand, if you look at the word "molestation," you might read that to mean the same as "arrest, detention"; you cannot physically interfere. As when there used to be debtor's prison, you cannot cart some MPP off to jail for failure to pay debts, but our view was that molestation, as was Mr. Kellock's view--

Mr. Villeneuve: Were he not an MPP, what alternatives would you have had to serve him the documents that were served?

Mr. Lederman: If he is not an MPP, you can serve him anywhere at any time, and if he is evading service--you would have to demonstrate to a court that the person is acting in a calculated way to avoid being personally served with a statement of claim--a court might give you an order allowing you to serve him by mail or something such as that, but you would have to demonstrate to the court that it was deliberate conduct to evade service. There is no other way for proper service of that statement of claim other than personal service.

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Mr. Villeneuve: Okay. In spite of section 38, in which you have quite obviously looked at some precedents, you state in your second paragraph that, Mr. Gillies is at Queen's Park and Lyn Artmont is there also and can be served at the same office. You emphasize the fact that you want this statement of claim and whatever else served here.

Mr. Lederman: At his office.

Mr. Villeneuve: At his office.

Mr. Lederman: Yes. That certainly was the intention, to serve him at his office.

Mr. Villeneuve: I am an elected MPP, and would you not feel that, indeed, page 5 is to some degree intimidating of any elected person at Queen's Park from your statement?

Mr. Lederman: That what is intimidating, being served with a statement of claim?

Mr. Villeneuve: We should be on guard of every word we say anywhere, and if someone takes objection to what we say, then let it go to court and right shall prevail.

Mr. Lederman: I think as an MPP you have extraordinary privileges in terms of statements that you say in this committee or statements that you make in the assembly. They are extraordinary privileges that ordinary citizens do not have. You have an absolute privilege. You can say anything you want. You can damage people's reputations and they have no claim against you.

On the other hand, if an MPP chooses to make a statement to the media outside of the House, outside of a committee, he is no different from any other citizen of this province, and if that statement causes grievous harm, then the law provides for an actionable cause.

Mr. Villeneuve: Sometimes some rather extraordinary things occur with governments, and do you not think it possibly is our job to probe, look into and do whatever we have to, to ensure that, indeed, guidelines, rules as they exist are followed and proper things occur?

Mr. Lederman: That is why you have an absolute privilege for all the probing that you wish to engage in, in this committee or any committee or in the House. You have the privilege and the protection. But when an MPP issues news releases for distribution to the press, then we are of the view that this is a different matter.

Mr. Villeneuve: As an elected person I certainly was of the opinion that we had some degree of immunity. You are saying we do. As far as I am concerned, and I certainly do not like to make statements that cannot be--

Mr. Lederman: I should say there may be other defences available--that is, fair comment or qualified privilege--but those are matters that can be raised in the course of an action.

Mr. Villeneuve: Would you agree that if, indeed, this comes to fruition and Mr. Gillies is found guilty, in spite of what has occurred--and I do not know what the penalties would be--it would be a pretty intimidating situation for all of us who are elected?

Mr. Lederman: I do not see why it should be.

Mr. Villeneuve: Thank you.

Mr. Callahan: I would like to pick up on that point, because the member who last spoke referred while examining Ms. Artmont, I believe, to the word "threats." Is it not a fact that the whole purpose of privilege in the House is to allow parliament to do exactly what it has to do: give it freedom of speech?

Mr. Lederman: It is a pretty powerful protection and responsibility that members of parliament, members of provincial parliament have, and it is an absolute privilege. You can say anything you wish and be immune from action so long as it is said in the confines of your committee work or in the assembly.

Mr. Callahan: Now, if you carry it outside the House, I refer to the Hansard of January 22, page 4787, where Mr. Gillies went on to say: "I only add that if this is an attempt to intimidate me as a member of the assembly, I

want to inform the members of the House that it will not work. I intend to keep raising matters I consider to be of urgent public importance in this House whether Mr. Fleischmann or anyone else likes it or not." He went on to say--and I cannot find the reference to it--that he would say these inside the House or outside the House.

While he is inside the House, as I understand your evidence, he has absolute privilege, he can ask what questions he likes; and, in fact, I had raised the point at public accounts when this issue came up, but even the Hansard recording of that--even though it is publicly reproduced--would contain the same privilege that exists within the House or the committees.

Mr. Lederman: In all likelihood that is so.

Mr. Callahan: So in fact, as long as he confined his comments here, he would not be subject to a lawsuit.

Mr. Lederman: Even to make the comments without having any basis for so stating.

Mr. Callahan: If he makes them outside the House, he has the defence, as you have suggested, that it is either the truth--mind you, he would have to go to court to do that--or a qualified privilege.

I am not sure whether you can answer this or not, but it seems to me the Parliament of Canada has specifically, in contradistinction to the absolute right every citizen has to commence a civil action, be it frivolous or well grounded--that is a right that is preserved to every citizen of Canada. Is that not right?

Mr. Lederman: That is my understanding.

Mr. Callahan: In order to avoid the possibility of people threatening criminal actions, the Parliament of Canada has specifically referred to this in section 231, I think it is, of the Criminal Code. It specifically reserves the right and says, "Thou shalt not threaten a criminal action against a person, or it is a criminal offense." Then in subsection 2 it goes on to say that this does not in any way affect the right of a person to threaten civil action. Mr. Sopinka is nodding yes. This is correct, is it not? The Parliament of Canada has, in fact, addressed this; a civil action is the right of all Ontario citizens.

Mr. Lederman: Yes.

Mr. Sopinka: And the right to threaten.

Mr. Callahan: So when we use the word "threat," it is not a threat; it is a right that is being exercised by an individual.

Mr. Lederman: It is a right; that is right. Again, it depends on how one views, say, a notice of libel whether that is just a threat or an intimidating document. First, a notice of libel is required by the statute, and second, it provides an opportunity to the person who receives it for some second sober thought.

Mr. Callahan: To short-circuit.

Mr. Lederman: To short-circuit and either to apologize or to say, "Damn it, I am right, and I am going to stick by it."

Mr. Callahan: Mr. Martel referred to three years for a libel action.

Mr. Lederman: Three months.

Mr. Callahan: No, that it would be under the cloud of a libel action for three years or perhaps even longer. If the matter is not proceeded with expeditiously, that is probably the same length of time in almost any type of lawsuit, be it for a promissory note or failing to pay your mortgage or your car payments.

Mr. Lederman: Three years is probably the standard time taken in Toronto to get a matter on for trial. It is not unique to a libel action. It is the same time generally taken for a personal injury action or any kind of civil lawsuit at the Supreme Court of Ontario level. It mainly has to do with the backlog of cases facing the courts. Once all the pre-trial matters are completed, you sit on a waiting list, probably for a year and a half, before you get to trial.

Mr. Callahan: It is my understanding, and you can tell me whether it is correct or not, that even after the claim is issued and the defence is entered and issue is joined, you then go to discoveries.

Mr. Lederman: Yes.

Mr. Callahan: At that time, each party has the opportunity, through his counsel, to question the other litigant on the basis of the foundation of their claim.

Mr. Lederman: Yes.

Mr. Callahan: Very often, as a result of that, facts come out that one or other of the parties were not aware of, and the matter is brought to an end. Is that right?

Mr. Lederman: Most actions do not go to trial. Most actions are settled either at the courtroom door or, most likely, at the completion of discoveries, when both sides have had an opportunity to examine the other side as to the allegations in the statement of claim and the defences in the statement of defence.

Mr. Callahan: There is even discovery of documents in advance of that that may well lead one or other of the parties to decide that the matter should go no further.

Mr. Lederman: There is an obligation on counsel to produce all the relevant documents, and obviously that has some input as to whether an action will be settled.

Mr. Callahan: All right. The final remedy--

Mr. Chairman: Mr. Callahan, assist the chair for just a second by giving me some faint clue as to how this is connected with anything that is before this committee.

Mr. Callahan: It was raised by several of the members in terms of

its being a threat, and I think to leave it at that is not really being fair. It is not raising the matter in its fair issue. I want to show there are avenues, and I have two more questions.

Mr. Chairman: I am going to let you do that, but I am going to ask you to do it succinctly, please.

1530

Mr. Callahan: There is also, during that time, the opportunity to bring a motion before the court if the action is frivolous and vexatious, and the court can dismiss it at that point.

Mr. Lederman: Yes. It works for both the plaintiff and the defendant. You can bring a motion for a summary judgement if you think the facts are obvious and there is no need for a trial. You try to set that out in an affidavit and bring it before a judge. By the same token, a defendant has the right to say, "There is absolutely nothing to this action," and bring a motion to have the matter dismissed summarily.

Mr. Callahan: The penalty can be costs.

Mr. Lederman: Solicitor-client costs, which means reimbursement for your legal expenses.

Mr. Callahan: I have one final question. If a writ is served within a judicial forum--let us say, within a court--is that service valid or does service have to be re-served?

Mr. Lederman: If the service is void, then there is no effective service. But it is interesting. You raise the question of service in a courtroom. There is nothing in the rules of practice that precludes service in a courtroom, but it certainly is the understanding that it would not be effective.

I should also say here that we all have received--I do not know if this committee is aware of it--a notice of intent to defend from the Blake, Cassels and Graydon law firm, acting on behalf of Mr. Gillies and Ms. Artmont. We have an indication from Mr. Gillies and Ms. Artmont that they have accepted the service and have now delivered a notice of intent to defend, which means they have another 10 days in which to deliver a statement of defence.

Mr. Callahan: Okay. What I am getting at is, let us say the service was void. It was not picked up by the solicitor involved. The six-month period ran its course. The writ expired. You would then have to go to a judge to have that writ reissued. That would normally be on the basis of the defendant's whereabouts not being known or avoidance of service, not normally on the basis that the lawyer goofed and did not realize that service in a judicial forum was void. He probably would not get that order.

Mr. Lederman: It is hard to tell. To be fair, sometimes you will get that order on the basis of the inadvertence of counsel. If there was no real prejudice in extending the time for service, a court might allow it. Again, you are seeking an indulgence from the court. I am sure it would be contested. What a court might do is not absolutely predictable.

Mr. Sterling: I have a point of clarification.

The Vice-Chairman: To the witness?

Mr. Sterling: Yes. You indicated there was a statement made after they were served with the notice for libel that, "There will be no f...king apology."

Mr. Lederman: "This time."

Mr. Sterling: Did you say Mr. Gillies said that?

Mr. Lederman: I am not sure whether it was Mr. Gillies. I am at a loss because I do not--it is referred to in the statement of claim.

Mr. Sterling: Yes, I have that on page 8. That clearly is Ms. Artmont's statement. I think you attributed that statement to Mr. Gillies.

Mr. Lederman: I think I said, "Ms. Artmont" first and then perhaps, "Mr. Gillies." Yes, Ms. Artmont said it.

Mr. Morin: How long have you been dealing with Mr. Clamp? A decade?

Mr. Lederman: Of Metro Process Servers?

Mr. Morin: Yes. Eight or 10 years?

Mr. Lederman: I must say, we have no special relationship with the process-serving agencies. I have no idea how long.

Mr. Morin: Have you always been satisfied with his work?

Mr. Lederman: Yes, we have been satisfied; otherwise we would not use them. Again, it is not a firm policy that we make use of one agency over another.

Mr. Morin: Are you always as thorough by sending a letter to processors to say: "Look, this is the procedure that we follow. This is what we want. We are writing this letter because you may find complications. The issue may be complicated." Is the reason you wrote this letter to say: "Beware. This is what you should do"?

Mr. Lederman: If I can give an appropriate response to that, we sent an instruction to the process server for him to deal with service upon Mr. Gillies and Ms. Artmont at their offices. That was the intention. I do not know if it is worth the exercise to go through every sentence in the letter. I think what happened was, after he received this letter, the first step Mr. Clamp took was to communicate with them with a view to arranging a unembarrassing way in which the document could be delivered, rather than his hanging around the office or anything like that.

Mr. Morin: In other words, you wanted to be sure that things were done properly because a statement of claim was being delivered at the Legislature? Am I correct?

Mr. Lederman: We wanted the service to take place at his office. We did not anticipate that there would be a problem.

Mr. Morin: Is Mr. Clamp the type of individual who would defy the normal process or go beyond the call of duty in order to deliver his document?

Mr. Lederman: I do not know Mr. Clamp personally. He strikes me as a very responsible individual.

Mr. Morin: I believe you answered this before. Was your firm contacted at any time from the time that the statement of claim was delivered at the standing committee on public accounts to the time that Mr. Gillies made his--until today? Were you contacted by a lawyer?

Mr. Lederman: The only contact, from the time we issued the statement of claim and delivered it over to--

Mr. Morin: Was that a contact by a lawyer? We know what to ask, because according to Mr. Gillies and according to the statement made by Ms. Artmont, it was not a statement of claim that was to be delivered; it was a letter.

Mr. Lederman: I am not aware of the details of the conversation.

Mr. Morin: What I am getting at is that if I were to receive a letter like this--

Mr. Lederman: A letter like which?

Mr. Morin: Like the one referred to by Ms. Artmont, sent by a legal firm. Let me tell you I would seek legal advice immediately and ask: "Look, what is the content of that letter? What does it mean?" In the answers to the questions I asked yesterday, I was told that Ms. Artmont did not even know the content of that letter.

Mr. Lederman: I am not sure. When you say "the letter," which letter are you referring to?

Mr. Morin: The letter that she referred to when she received a call from--I am sorry, I took it for granted you already knew.

Mr. Lederman: I am afraid I am not cognizant of all the evidence that has gone in.

Mr. Morin: According to Mr. Clamp, Ms. Artmont received a call from him advising that he would deliver to her a statement of claim. According to Ms. Artmont's statement, it was a letter. That is the letter I am referring to. The letter was a statement of claim, according to Mr. Clamp.

The information I received yesterday is that from the time she was called on Monday, January 19, until it was delivered on Thursday, she did not know the content of the letter. She did not know it was a statement of claim.

Mr. Lederman: That is her evidence.

Mr. Morin: That is what she said. During that period, were you contacted by a representative of Mr. Gillies, by Ms. Artmont, to find out the content of that letter?

Mr. Lederman: No. We received no contact from anyone. Let me say that from the time that the letter of Mr. Brown, dated January 15, and the

statement of claim were left with Metro Process Servers, until the time late in the afternoon of January 22 when the incident occurred, we had no contact with anyone about the statement of claim. We had no contact with Metro and we had no contact with Mr. Gillies or Ms. Artmont.

Mr. Morin: I will ask you a very simple question.

Mr. Lederman: I hope there is a simple answer.

Mr. Morin: Yes, I know. I am sure there will be. If, for instance, you are Mr. Gillies or you are Ms. Artmont, you know all the privileges of the House. You understand all the privileges. I am about to deliver to you a statement of claim. Would you take it upon yourself to say, "Mr. Morin, be careful, you are not allowed to do that?" Or would you say, "Mr. Morin, come and deliver it?"

1540

Mr. Lederman: It depends what your motive is in choosing the latter course. I would have thought that the rules of this Legislature, with respect to members' privileges, are maybe arcane. They are not published and available in the public domain. It is not clear what those privileges are, and I think they are struggling with them at the moment. I would have thought that the prudent course for a responsible MPP or executive assistant faced with that would be to say, "Look, I do not think you should proceed this way because I think there is a privilege attached."

Mr. Sterling: I was a little mixed up in terms of your knowledge of Mr. Clamp and Metro Process Servers when Mr. Morin was asking questions about your knowledge of Mr. Clamp. You responded about your relationship with Metro Process Servers. Had you ever met Mr. Clamp before he came to your office?

Mr. Lederman: Personally?

Mr. Sterling: Yes.

Mr. Lederman: No. I had never met Mr. Clamp before. It may have been that other members of the firm had some personal involvement in his effecting service in other matters but, no, I had not personally met Mr. Clamp until that afternoon.

The reason I was involved was that I am the partner responsible for this matter. I could see this had become a serious matter that afternoon in the House. From the point of view of the firm, I wanted to find out exactly what happened. Mr. Clamp came down willingly. I made it a point to get involved at that point to question Mr. Clamp and to find out what the circumstances were. That was my first meeting with him.

Mr. Sterling: You do not know how long he had been with Metro Process Servers, what experience he had or whatever?

Mr. Lederman: He explained it at that point because in the affidavit it sets out how long the company had been in business and his experience.

Mr. Sterling: It does not outline what Mr. Clamp's experience is in that affidavit. It says Metro Process Servers is 10 years old.

Mr. Lederman: His explanation to me at the time, Mr. Sterling, was

that he had been there for almost as long as the firm had been. He had been a partner in the operation so I must have interpreted that to mean that if Metro was around for 10 years, then he was around for 10.

Mr. Sterling: Would it upset you if I told you that he was dismissed with cause from the city of Mississauga three years ago?

Mr. Chairman: I am going to intervene here for just a minute. I really do not know if that is relevant to the proceedings. In any event, I do not think the witness before you now is interested in voicing his opinion on that. I am not interested in hearing it either.

Mr. Sterling: It goes to the credibility of the witness, Mr. Chairman.

Mr. Chairman: I would go so far as to instruct the witness not to answer the question.

Mr. Bossy: I have a couple of short questions. For clarification, you, as the lawyer representing Mr. Fleischmann, drafted the statement of claim and then had it delivered. Earlier, you made the statement that had you known it was going to be delivered on the basis that it was delivered, you would not have let that happen. There must be a fear, for some reason, that you would not let it happen.

Also, by evidence that has been given here, there was a time element set up to deliver this, negotiated by Mr. Clamp and Ms. Artmont, which was mutually convenient. The only time that he could identify that Mr. Gillies and Ms. Artmont would be together at the same time was when they were in this room. This having transpired now, I am looking for what you feel your legal opinion would be, on the basis that it has been served in this room, and the room being part of the inner sanctum of the Legislature, we have our privileges as members. Would you consider that statement of claim could be deemed to be null and void under the circumstances of its delivery?

Mr. Lederman: I think the circumstances were pursuant to an understanding or a misunderstanding. It is regrettable and unfortunate that events unfolded that way. As to the present legal effect of the service, I can only say that Mr. Gillies's lawyer has now delivered a notice of intent to defend and that is a document that can be delivered after one recognizes a valid service of a statement of claim.

To explain the process, if you have been served validly with a statement of claim, the time limits under the rules of court are that you have 20 days to deliver a statement of defence. If you deliver a document known as a notice of intent to defend, you buy yourself another 10 days, which means you then have 30 days to deliver a statement of defence. We have received a notice of intent to defend from the Blake, Cassels firm on behalf of Mr. Gillies and Ms. Artmont, which suggests to us that they are treating the service as being valid and that they intend to deliver a statement of defence within 30 days.

I do not think it is a big issue. Because circumstances occurred which created this incident, I do not think it is worth debating whether the service was valid. We certainly would be prepared to reserve Mr. Gillies and Ms. Artmont at their residence or some other place to effect a valid service and allow the 20 days to start running from that point. It is not an issue that is of great importance to us.

Ms. Fish: Can I just try to understand a little bit of the timing on the notice of intent? Is that the first notice?

Mr. Lederman: I call it notice of libel.

Ms. Fish: The timing on the notice of libel, then. Can you review this for me? Was it on November 5, 1986, that a notice of libel was served?

Mr. Lederman: Yes.

Ms. Fish: Did I understand you correctly to say that your firm, whoever was handling the matter in the firm, had no knowledge of the intended schedule of the standing committee on public accounts or of any of its business?

Mr. Lederman: That is right, at least with respect to convert-to-rent. You may recall that we were involved before the public accounts committee during the Caplan inquiry. We obviously had involvement at that time, during the summer as I recall, with the public accounts committee and its sittings on that occasion.

Early into the fall, there were some inquiries made of us about providing further information and matters of that sort. I think that all would have ended before this time, so that was the extent of our knowledge of what was going on at the public accounts committee, but it certainly relates to the matters pertaining to the Caplan affair.

Ms. Fish: Just so I am clear, you are saying that no one in your firm was at any time aware that on November 6, for example, the public accounts committee would be voting on a motion to investigate the convert-to-rent program, specifically the loan to Huang and Danczkay and Mr. Fleischmann's possible involvement in that.

Mr. Lederman: We were not aware of it when the notice of libel was served on November 5. I do not know whether on November 6 we might have read something in the press about it. We certainly were not aware in advance, until reading something about it in the press.

1550

Ms. Fish: Were you or was any member of your firm aware any time after November 5 of the committee's intention to so investigate?

Mr. Lederman: If there was something in the press generally about the intention to investigate, we may have had whatever information was there. We did not consciously think of it, other than having seen it in the press. We certainly were not aware of whether this committee had decided to investigate or what its schedule was with respect to it. We had no contact with anyone about those matters.

Ms. Fish: Neither you nor any member of your firm inquired about the disposition of such motion or the intended schedule of the committee should it wish to investigate the Huang and Danczkay loan under the convert-to-rent program and Mr. Fleischmann's involvement in it.

Mr. Lederman: That is correct. We did not make any investigation of those matters.

Ms. Fish: Do you think the investigation by a committee into that

specific question would in any way bear upon the content of the action you had against the Toronto Sun, the reporters, Mr. Gillies and Ms. Artmont?

Mr. Lederman: No. We were convinced there was an actionable cause here. We had time limits to meet to preserve our client's rights. That, and nothing else, was what was uppermost in our minds. We were not interested in interfering or getting involved with processes here, unless we were invited to attend to participate.

Ms. Fish: Neither you nor any member of your firm was aware of an intention of a standing committee of this Legislature to investigate the Huang and Danczkay loan under convert-to-rent and Mr. Fleischmann's involvement in it?

Mr. Lederman: There may well have been some indication in the press of consideration being given to investigate the convert-to-rent area, but it played no role in our intentions with respect to the lawsuit. We made no further inquiries as to whether that was going to be a serious intention or how it was to proceed, which committee was to look into it and what witnesses were to be called. We did not get into that matter at all.

Ms. Fish: To the best of your knowledge, was Mr. Fleischmann in any way aware of that?

Mr. Lederman: If he was, he did not communicate that information to us.

Mr. Chairman: Are there any further questions from members of the committee?

Mr. Callahan: I have a quick one arising out of that. I gather the decision to serve the claim as it was served was your decision.

Mr. Lederman: Let me make that absolutely clear, if I have not done so before. Mr. Fleischmann left to us completely the whole question of serving the notice of libel and the statement of claim. He just wanted the matter to be proceeded with quickly and appropriately, but left to us the responsibility of how that was to be handled.

Ms. Fish: I have a supplementary on that: Would you or any member of your firm have advised Mr. Fleischmann of the timing of the service of either the notice of libel or the statement of claim?

Mr. Lederman: We would have advised Mr. Fleischmann that there is a six-week period to deliver a notice of libel and that there is a three-month limitation period to issue a statement of claim. We would have told him the purpose of a notice of libel and its significance or how Mr. Gillies or Ms. Artmont might respond or might not respond. I think that is what any lawyer would tell a client with respect to the process.

Ms. Fish: On the particulars of my question, would you or any member of your firm have advised Mr. Fleischmann that, for example, notice of libel would be served on November 5?

Mr. Lederman: Probably not.

Ms. Fish: You or any member of your firm?

Mr. Lederman: We would have received instructions from Mr. Fleischmann to proceed with the matter, that is, to deliver a notice of libel.

Ms. Fish: When would that instruction have been received?

Mr. Lederman: I am not sure of the exact date. It would have been after we reviewed the facts after the libel--our allegation is that it is libellous--on October 27. The notice of libel itself would have gone through a few drafts. When we were satisfied that it was in a proper form, we would have proceeded to serve it.

Ms. Fish: You would not have advised Mr. Fleischmann of that service?

Mr. Lederman: I am not sure. We might have advised him in advance that we were going to do it, but we certainly did not discuss with him whether it was to be on November 4, 5 or 6 or any relation other than getting on with the matter of ensuring it was done within a six-week period, to get on with it as expeditiously as possible.

Ms. Fish: But you might have advised him it was to be done on November 5?

Mr. Lederman: I am not sure. We certainly have contact with our clients and keep them informed of when documents are to be finalized and sent out.

Ms. Fish: Similarly, would you or any member of your firm have advised Mr. Fleischmann of the service of the statement of claim?

Mr. Lederman: Not of the exact timing of the statement of claim. We would have received our client's approval of the final form of a document as important as a statement of claim.

Ms. Fish: When was that approval?

Mr. Lederman: It would have been some time before the document was issued.

Ms. Fish: Can you figure out when that might have been?

Mr. Lederman: Some time before January 14. I would have to review the file and speak with--if you want to take a short recess, I can perhaps find that information.

Mr. Sopinka: Can we supply the committee with that information?

Mr. Chairman: If it is important and you want it, perhaps you can simply notify the clerk of the committee.

Mr. Lederman: Just so I understand, you want to know when it was that Mr. Fleischmann, to the best of our information, approved the statement of claim in its final form?

Ms. Fish: Yes. While you are at it, I would also be interested if you would check on whether you or a member of your firm notified Mr. Fleischmann about the service of notice of libel on November 5 and, if so, when.

Mr. Lederman: I am sorry. When we notified him before the actual service or after the service?

Ms. Fish: You tell me when you notified; I do not know when you notified.

Mr. Sopinka: About what? That it had been served or that it was going to be served?

Ms. Fish: I would like to know if you notified him that it would be served on November 5. Similarly, as a third point while you are checking, would you be good enough to tell me if you notified him that the statement of claim had been picked up by Metro Process Servers?

Mr. Lederman: I can tell you this on that last item. We certainly were not in consultation with Mr. Fleischmann about the timing of the service or how we were going to serve the statement of claim. The last contact we would have had with Mr. Fleischmann on the statement of claim would have been his review of the document before it was issued on January 14, but I can tell you categorically that he was not involved in, nor had any discussion with us about, serving the statement of claim, either the timing or manner. As well, he had made it clear to us that it was a matter for us to proceed with.

Ms. Fish: Would it be usual for you not to share the timing of that with a client, since you have indicated that you could have had up to six months to serve that actual statement of claim?

Mr. Lederman: What we would share with a client in these circumstances is to follow his instruction that, now that the document had been approved in final form, we proceed to issue and serve it. Whether it is served two days or a week from the time of issuance was a matter left to our discretion. That would have been the instructions from the client: "The document has now been approved. Proceed with it."

Mr. Sterling: I just want to clarify the record. I had been informed wrongly before about Mr. Clamp. I understand that the circumstance of his parting of the ways with his employer was not a dismissal but a disputed parting of the ways of the two employers.

Mr. Mancini: That was a pretty sleazy attempt anyway.

Mr. Lederman: I think that demonstrates the importance of an absolute privilege.

Mr. Chairman: Okay. There being no further questions, we are adjourned until 10 tomorrow morning. Mr. Patton will be the witness.

The committee adjourned at 4 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

THURSDAY, FEBRUARY 19, 1987

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:

Callahan, R. V. (Brampton L) for Mr. Newman

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

Witness:

From Metro Process Servers Ltd.:

Patton, D.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, February 19, 1987

The committee met at 10:11 a.m. in room 151.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: We have a quorum. The first witness--and actually the last witness for this week--is Mr. David Patton from Metro Process Servers Ltd. Mr. Patton, could you come forward and the clerk will swear you in?

David Patton sworn.

DAVID PATTON

Mr. Chairman: Just sit down and get comfortable. If you like, you can make an opening statement of any kind you want and then we would normally just go to questions from the committee. It is relatively informal. Do you have an opening statement, Mr. Patton?

Mr. Patton: No.

Mr. Chairman: Okay. Then we can go directly to questions.

Mr. Sterling: When were you first asked--

Mr. Martel: Excuse me. Did we get that paper about the facts? We were supposed to get a paper, the worksheet.

Mr. Chairman: We have not received that yet.

Mr. Patton: I have it.

Mr. Martel: If he has it, perhaps we could get it then.

Mr. Chairman: Mr. Sterling, go ahead.

Mr. Sterling: Yes. When was the first time you were asked to serve the statement of claim?

Mr. Patton: On the morning I did it.

Mr. Sterling: On the Thursday morning?

Mr. Patton: Yes.

Mr. Sterling: Who asked you to do that?

Mr. Patton: Mr. Clamp.

Mr. Sterling: What was the exchange between the two of you?

Mr. Patton: He just gave me instructions to come to this room and ask for Lyn Artmont.

Mr. Sterling: At that time, did he show you a letter from Stikeman, Elliott?

Mr. Patton: He showed me the worksheet as to what I was supposed to do and the instructions I was supposed to follow.

Mr. Sterling: Is that the worksheet that was--

Mr. Chairman: Yes. We are having copies of the worksheet made now.

Mr. Sterling: Perhaps I will go back to the worksheet when we do get copies of it.

Did you talk to anybody else about serving these two people?

Mr. Patton: No.

Mr. Sterling: There was the communication with Mr. Clamp and then you came here and served both Ms. Artmont and Mr. Gillies?

Mr. Patton: Yes.

Mr. Sterling: Were you asked to serve the same statement of claim to any of the other defendants that are named?

Mr. Patton: I was asked to serve them to all five.

Mr. Sterling: All five. Were you asked the same morning to serve all of the other five?

Mr. Patton: Pardon?

Mr. Sterling: Was it the same morning that you were asked to serve the other five?

Mr. Patton: Yes.

Mr. Sterling: Was there any distinction made by Mr. Clamp between the other four and Mr. Gillies?

Mr. Patton: No. I was instructed to come to this room first and then after Ms. Artmont and Mr. Gillies were served, I was supposed to go to the press gallery, as it says on the worksheet.

Mr. Sterling: You came down here. Did you successfully serve all five?

Mr. Patton: No.

Mr. Sterling: How many did you serve?

Mr. Patton: Four.

Mr. Sterling: Who did you serve?

Mr. Patton: Ms. Artmont, Mr. Gillies, Mr. Ganley, then I waited for Pauline Comeau. She was in the building, but I was not able to--I waited at the press gallery and she did not come back. I then proceeded to the Sun and served papers.

Mr. Sterling: Your instructions were to come to this room to serve Ms. Artmont, Mr. Gillies and then go to the press gallery to serve the rest?

Mr. Patton: Two.

Mr. Sterling: To serve which?

Mr. Patton: The two press people for the Sun.

Mr. Sterling: Okay. What about the last one?

Mr. Patton: I went to King Street to the Sun paper and served them directly.

Mr. Sterling: Okay. In terms of the conversation you had with Mr. Clamp that morning, how long did that conversation take to conclude? Was it a long conversation or a short one?

Mr. Patton: On that article?

Mr. Sterling: On your instructions to go out and serve.

Mr. Patton: How do you mean?

Mr. Sterling: I presume you came in in the morning?

Mr. Patton: Yes.

Mr. Sterling: You said to Mr. Clamp, "What am I going to do today?" He said, "You are going to serve these five." I do not want to put words in your mouth, but how long did the conversation take? Did it take two or three minutes or half an hour?

Mr. Patton: For this particular service?

Mr. Sterling: Yes.

Mr. Patton: It took a couple of minutes. He showed me what I was supposed to do and then I went on to my next one.

Mr. Sterling: What did he say to you?

Mr. Patton: He just told me I was supposed to go to room 151 and find Ms. Artmont, who would direct me to Mr. Gillies. Then I was supposed to go to the press room to serve the other two copies.

Mr. Sterling: Perhaps the clerk could give the witness a copy of the letter from Stikeman, Elliott to Mr. Clamp. I do not have my book right here. This is exhibit 2/1/16. It is a letter to Metro Process Servers from Stikeman, Elliott under the name of David Brown. Did you ever see this letter before?

Mr. Patton: I happened to look underneath the worksheet that the letter was attached to. I do not remember exactly what it said, but this seems to be the letter.

Mr. Sterling: Read the second paragraph of that letter.

Mr. Patton: "Phil Gillies is an MPP and can be served at Queen's

Park. Lyn Artmont is his executive assistant and can be served in the same office."

Mr. Sterling: That did not ring any warning bells of perhaps where you should go?

Mr. Patton: I was instructed to come to room 151.

Mr. Sterling: The letter was attached to the worksheet, but the instructions of Mr. Clamp overrode anything that was in this particular letter?

Mr. Patton: Mr. Clamp told me he had been talking to Ms. Artmont and that I was supposed to come to room 151.

Mr. Sterling: I see. Okay. I am looking at the worksheet now. Do you have a copy?

Mr. Patton: I do not have a copy.

Mr. Sterling: I presume now that the names or the items on it deal with the five numbers and it deals with the five defendants in the action.

Mr. Patton: Yes.

Mr. Sterling: The times on that document indicate the time at which you served them?

Mr. Patton: Yes.

Mr. Sterling: And the date of course?

Mr. Patton: Yes, and my initials at the end.

Mr. Sterling: Okay. Do you draw an affidavit then after you have completed that service?

Mr. Patton: I take my work back to Mr. Clamp.

Mr. Sterling: Yes.

Mr. Patton: Then Mr. Clamp fills out an affidavit for me. At that time, I will take it and have it sworn and commissioned.

Mr. Sterling: Did you go back to the office after you had finished here?

Mr. Patton: No. I had more work to do.

1020

Mr. Sterling: When did you see Mr. Clamp?

Mr. Patton: I believe it was six o'clock; around that time.

Mr. Sterling: Where did you see him at that time?

Mr. Patton: At his office.

Mr. Sterling: Had he been to the lawyer at that particular time, or do you know?

Mr. Patton: No. He said he was going to the lawyers.

Mr. Sterling: Did you have a discussion about the service?

Mr. Patton: No. I told him I served the papers.

Mr. Sterling: And that was the sum total of your conversation?

Mr. Patton: Yes.

Mr. Sterling: You have made an affidavit. Do you have a copy of that affidavit?

Mr. Patton: Which one? I have made two.

Mr. Sterling: You made an affidavit on January 28, 1987.

Mr. Patton: Yes.

Mr. Sterling: Where did you make this affidavit?

Mr. Patton: It was in Mr. Brown's room at Stikeman, Elliott.

Mr. Sterling: I see. This was about six days after you had served Mr. Gillies and Ms. Artmont?

Mr. Patton: Yes.

Mr. Sterling: Everything in the affidavit is to the best recollection of what happened in this room?

Mr. Patton: Yes.

Mr. Sterling: When you served Ms. Artmont with the statement of claim, did she know what you were doing at that time?

Mr. Patton: I did tell her.

Mr. Sterling: What did you say to her?

Mr. Patton: I said I had a statement of claim to deliver to her. I handed it to her and she accepted it.

Mr. Sterling: Was there any conversation before you handed it to her or did you just say, "Are you Lyn Artmont? I have a statement of claim," and you handed it to her?

Mr. Patton: No. I sat down and I told her who I was and that I had a statement of claim, upon which time I produced it and handed it to her and she took it.

Mr. Sterling: I do not have any further questions.

Mr. Warner: Thank you, Mr. Patton, for appearing before us this morning. I just have a couple of things I would like to go over. On the

worksheet, which you kindly brought along this morning, at the top there is "client"--I am not sure what that says. Is that "Stikeman"? Is that what it is supposed to say?

Mr. Martel: "Fleischmann."

Mr. Warner: No, "reference" is Fleischmann underneath that.

"Date received" is January 16. What does that mean? Is that the date you received this worksheet or is it the date on which you received the statement of claim?

Mr. Patton: That would be the date we received the claim.

Mr. Warner: So the letter was issued on the 15th, the day before, the Thursday; then someone, either you or someone else from the office, would have picked up the statement of claim the following day?

Mr. Patton: Yes.

Mr. Warner: And then have contacted Ms. Artmont on the 19th, I suppose.

Mr. Martel: Or 20th.

Mr. Warner: Or 20th.

Mr. Patton: I do not know--

Mr. Warner: You are not sure.

Mr. Patton: --about when Mr. Clamp contacted Ms. Artmont.

Mr. Warner: Okay. You have been in this line of work for a long time?

Mr. Patton: Two years, three months.

Mr. Warner: During that period of time, have you served any other members of the assembly with papers?

Mr. Patton: No.

Mr. Warner: Were you even vaguely aware that it might not be proper to serve members of the assembly while they were doing their business, sitting in committee or sitting in the House, attending to their duties?

Mr. Patton: I was just doing what I was instructed to do.

Mr. Warner: So you had no knowledge that what you might be doing was not proper?

Mr. Patton: I did not have any knowledge of that.

Mr. Warner: Did you know how you would recognize Ms. Artmont or Mr. Gillies?

Mr. Patton: I was told that Ms. Artmont would be the only lady in the room, but when I came into the room, I happened to notice that there was more than just one, so I sat down at the chair at the door.

Mr. Warner: Did she at any time say to you, "This is not proper; you cannot do this," or "You cannot serve a member here"?

Mr. Patton: No.

Mr. Warner: You also served papers on Mr. Gillies?

Mr. Patton: Yes.

Mr. Warner: After you served her first?

Mr. Patton: Yes.

Mr. Warner: Do you recall his exact words to you?

Mr. Patton: After I handed him the papers, he looked at them and he said, "I do not think I can accept the papers at this time." I believe that is what he said.

Mr. Warner: But he then took the papers?

Mr. Patton: Yes, and sat down.

Mr. Warner: When he said, "I do not believe I can accept the papers," did you respond to him?

Mr. Patton: I did not say anything. I just sat down.

Mr. Warner: After you had served the papers and the papers on the Toronto Sun--you then returned to the office, I take it--did anyone in the office at any time mention that he had made a mistake or that the papers should not have been served on a member of the assembly while a committee was sitting?

Mr. Patton: No.

Mr. Warner: When did it first come to your attention that they had not been properly served?

Mr. Patton: It was not told to me that it was not properly served. I believe I did do it correctly, the way I was instructed.

Mr. Warner: As per your instructions?

Mr. Patton: Yes, and Mr. Clamp was going down to the Stikeman office to talk to a lawyer about how the papers were served--

Mr. Warner: I see.

Mr. Patton: --but he did not say anything about improper or anything else.

Mr. Warner: Okay. Thank you, Mr. Patton.

Mr. Callahan: Mr. Patton, you told us when you came into the office on the 22nd and picked up the papers that you had a discussion with Mr. Clamp. Is that right?

Mr. Patton: Yes.

Mr. Callahan: Perhaps you could tell us in some detail what that conversation was, as best you can remember.

Mr. Patton: He just showed me the worksheet and told me I was supposed to come and see Ms. Artmont at room 151, and then after those two papers were served, I would go and serve the other two in the press gallery.

Mr. Callahan: Was anything further said? Was anything said to you that an appointment had been arranged with her for that morning?

1030

Mr. Patton: Mr. Clamp said he had been talking to Ms. Artmont and Ms. Artmont told him that it would be in room 151, as he pointed out to me on the worksheet, after 10:30.

Mr. Callahan: There was an appointment. I would like you to take a look at your worksheet. There is writing on it. I would like to know is any of that writing yours?

Mr. Patton: Yes, sir. Numbers 1, 2, 3 and 4.

Mr. Callahan: When this worksheet was given to you by Mr. Clamp, with the exception of the top portion, client reference attention, was it blank?

Mr. Patton: No, sir. Mr. Gillies's name was on. Ms. Artmont's name was on. Everything was on there except where the "yes" is circled with the date, the time, saying "personally" and the letter "D" after.

Mr. Callahan: How about the items down at the very foot? It has Gillies and Artmont in room 151 after 10:30 a.m. Who wrote that?

Mr. Patton: That would be written by Mr. Clamp.

Mr. Callahan: By the way, do you wear glasses.

Mr. Patton: I have a pair of sun sensor glasses that I usually wear.

Mr. Martel: Hey now, there is a Perry Mason.

Mr. Callahan: You came into the room. Did you sit there? I am not quite sure. You may have told Mr. Sterling. How did you quite come to meet Ms. Artmont? Did she come over and speak to you first, or did you go and speak to her?

Mr. Patton: I looked around and the lady sitting right across from me, it seemed to me that she said--I put it in my affidavit that I believe she said am I looking for her. I went over to her, sat down and told her I had a statement of claim.

Mr. Callahan: I gather from what you are saying that it appeared as though she anticipated your arrival.

Mr. Patton: Yes, sir.

Mr. Callahan: Did you know Ms. Artmont at all?

Mr. Patton: No, sir.

Mr. Callahan: Did you know Mr. Gillies at all?

Mr. Patton: No, sir.

Mr. Callahan: You then went over and sat down beside her?

Mr. Patton: Yes, sir.

Mr. Callahan: You gave her the statement of claim?

Mr. Patton: Yes.

Mr. Callahan: Then she went and got Mr. Gillies, did she?

Mr. Patton: I asked her if Mr. Gillies was in the room and she said yes and that she would get him.

Mr. Callahan: She would get him. Did she in fact?

Mr. Patton: She got up and went over to the refreshment part and spoke to a gentleman over there and then came back to me.

Mr. Callahan: You had to serve someone else after that. What did you do after you had served Mr. Gillies? You said you sat in your chair.

Mr. Patton: I sat in the chair and Mr. Gillies came and sat back down at his chair. He interrupted the meeting that was going on and that is when I got up and left.

Mr. Callahan: You left. Did Ms. Artmont leave with you?

Mr. Patton: No, sir.

Mr. Callahan: Did you see Ms. Artmont at all after that?

Mr. Patton: Yes, sir.

Mr. Callahan: Where?

Mr. Patton: In the same chair, about half an hour later.

Mr. Callahan: You left the chamber. You left room 151. Where did you go from there?

Mr. Patton: The press room.

Mr. Callahan: After you left the chamber, did Ms. Artmont leave with you?

Mr. Patton: No, sir.

Mr. Callahan: So you left the chamber yourself and went up to the press gallery?

Mr. Patton: Yes, I did.

Mr. Callahan: Are you familiar with Queen's Park?

Mr. Patton: No, sir.

Mr. Callahan: Did you know where the press gallery was?

Mr. Patton: I had asked directions.

Mr. Callahan: Who did you ask?

Mr. Patton: Information.

Mr. Callahan: Did you ask Ms. Artmont at any time where the press gallery was?

Mr. Patton: No, sir.

Mr. Callahan: Did she assist you in any way with finding the press gallery?

Mr. Patton: I did not ask her.

Mr. Callahan: You went up to the press gallery. You could not find Comeau to service, I gather?

Mr. Patton: Yes, sir.

Mr. Callahan: You came back down again. Why did you come back down again to room 151?

Mr. Patton: I did not. I was in the press gallery. Since Pauline was not there, I asked if Mr. Ganley was in. He was and I served him papers.

Mr. Callahan: Then what did you do?

Mr. Patton: I asked if he knew where Pauline was. He said she was in Queen's Park but he did not know where.

Mr. Callahan: What did you do then?

Mr. Patton: I waited around.

Mr. Callahan: For how long?

Mr. Patton: About half an hour.

Mr. Callahan: Then what did you do?

Mr. Patton: I came back down here. I came back in the door and asked Ms. Artmont if there was a press conference going on.

Mr. Callahan: Was the meeting still going on here?

Mr. Patton: Yes, sir.

Mr. Callahan: You asked whether a press conference was going on. What did she tell you?

Mr. Patton: She thought there was.

Mr. Callahan: Did she direct you as to where that press conference was.

Mr. Patton: She took me to the room.

Mr. Callahan: You did not find anybody, I gather.

Mr. Patton: No, sir.

Mr. Callahan: And then you left.

Mr. Patton: I thanked her and I left.

Mr. Morin: So on no occasion whatsoever did Ms. Artmont help you to go to the press?

Mr. Patton: To what, sir?

Mr. Morin: To go to the press room.

Mr. Patton: No, sir.

Mr. Morin: On no occasion, none at all. She did not help you whatsoever.

Mr. Patton: Up to the press room?

Mr. Morin: Yes. To indicate to you where the press room was, to indicate to you who was Miss Comeau?

Mr. Patton: No, sir.

Mr. Morin: On no occasion.

Mr. Chairman: Let me just interrupt a bit here. There is a little bit of confusion.

She did not direct you upstairs to the gallery, but she did show you where the media studio is, which is about three doors down from this room?

Mr. Patton: Yes, sir.

Mr. Morin: Did she walk with you to the press room?

Mr. Patton: Down here?

Mr. Morin: Yes.

Mr. Patton: Yes, sir.

Mr. Morin: She walked with you?

Mr. Patton: Yes, sir.

Mr. Morin: Did she enter the room with you?

Mr. Patton: She opened the door to take a look if there was--

Mr. Morin: If Miss Comeau was there?

Mr. Patton: --a press conference going on or any kind of meeting going on.

Mr. Morin: After that she left you to come back here?

Mr. Patton: That was it. I said, "Thank you very much" and we both left.

Mr. Morin: Where did you proceed after that?

Mr. Patton: To 333 King Street East.

Mr. Morin: She did accompany you from here to the media room.

Mr. Patton: Yes.

Mr. Morin: When you were about to hand the document to Mr. Gillies, he hesitated to take the document? Is that not what you said?

Mr. Patton: No, sir.

Mr. Morin: No? Did he say, "I believe I cannot take that document"? When I say he hesitated, it is because he said, "Well, I believe I cannot take that document."

Mr. Patton: I told him I had a statement of claim. He took it.

Mr. Morin: He took it. Did he say, "I believe I cannot take it"?

Mr. Patton: He took it, looked at it, and that is when he said he did not believe he could accept it.

Mr. Morin: Was there any hesitation on his part to take it? Do you know what I mean?

Mr. Patton: No, there was no hesitation.

Mr. Morin: He said, "I believe I cannot take it" but did he show any sign of not wanting to take it?

Mr. Patton: No, sir.

Mr. Morin: Was there an indication from Ms. Artmont by saying, "Take it"?

Mr. Patton: I handed it to him and he took it.

Mr. Morin: Was he told by Ms. Artmont to take it, because you said he hesitated to take the document.

Mr. Patton: No, sir, I did not say that.

Mr. Morin: He said, "I believe I cannot take the document."

Mr. Patton: By words, but he did accept it.

Mr. Morin: By words. When he said that, during that interval from the time he said that, from the time he took the document, did Ms. Artmont engage in a conversation saying, "Take the document."

Mr. Patton: I do not believe so.

Mr. Morin: Did you know the content of the letter that you were delivering?

Mr. Patton: No, sir.

Mr. Morin: Did she ask you for any identification to find out who you were?

Mr. Patton: I showed her a driver's licence that I had.

Mr. Morin: Did she ask for that or you did that?

Mr. Patton: No, she did not ask that.

Mr. Morin: You did that.

Mr. Patton: I wanted her to know that I was who I said I would be.

Mr. Morin: When you entered the room, you did not know who she was?

Mr. Patton: No, sir.

Mr. Morin: Were you told how to recognize her?

Mr. Patton: Description?

Mr. Morin: Yes.

Mr. Patton: No, I did not have a description.

Mr. Morin: Were you told at any time by Mr. Clamp that she would be the only woman in the committee room? You were told that?

Mr. Patton: Yes, sir.

Mr. Morin: So when you entered the room, you were quite surprised to see three women?

Mr. Patton: Yes, sir.

Mr. Morin: And you did not know who Ms. Artmont was?

Mr. Patton: No, sir.

Mr. Morin: Is she the one who recognized you?

Mr. Patton: We looked at each other. I looked around the room for Mr. Gillies. I happened to notice there were name plates. I looked to see if Mr. Gillies's name plate was here.

Mr. Morin: It is only true by the time you moved and sat beside her that you knew it was her. Was there any other type of conversation with her? You introduced yourself and you handed her the document?

Mr. Patton: I asked if Mr. Gillies was in the room.

Mr. Morin: She showed you Mr. Gillies?

Mr. Patton: No, she did not. I asked her if he was in the room. She said she would get him. After she said that, she went over to the refreshment booth and spoke to a gentleman, who came over. I asked if he was Mr. Gillies. I asked her if that was Mr. Gillies and she said yes. He came over and I handed him the paper. I asked him if he was Mr. Gillies. He said yes and I handed him the paper.

Mr. Morin: Who advised Mr. Gillies that you were in the room? Ms. Artmont?

Mr. Patton: Yes.

Mr. Morin: She went to see him at his seat?

Mr. Patton: No.

Mr. Morin: He was at the coffee urn?

Mr. Patton: Yes.

Mr. Morin: I will come back to what Mr. Gillies told you. He said, "I believe I cannot take that document here." Did Ms. Artmont say that to you, "I believe I cannot take that document here"?

Mr. Patton: She did not say anything.

Mr. Mancini: I think there were a couple of important points made in your testimony. I want to be absolutely certain of what you have told the committee. Once you entered the room, sat down and got yourself accustomed to the surroundings, I am assuming you sat there for some minutes, looking for Ms. Artmont. Was she sitting directly across from you, in front of you, behind you? Where was she sitting?

Mr. Patton: Directly across from me.

Mr. Mancini: Mr. Chairman, could I have the witness try to recreate where they were sitting? I would like to have a good idea of where they were sitting, if it is okay with you. I believe the testimony the witness gave this morning, which says that Ms. Artmont approached him as if she expected him, is going to be very important when we get to writing our report. I would like to know exactly where they were.

Mr. Chairman: The only problem I have is that Hansard will not be able to pick it up. Maybe this will assist. It is my understanding that Mr. Patton came in and sat on the last chair just inside the door on the left-hand

side and Ms. Artmont was sitting in the last chair just before the door on the right-hand side. So they were directly across from one another.

Mr. Martel: I am having difficulty containing myself. We have gone through this how many times?

Mr. Mancini: Let us just take it one more time.

Mr. Martel: Why do we not try seven or eight times over the same nonsense? Heaven help us.

Mr. Mancini: Yes, I know. Thanks, Elie.

Mr. Callahan: We sit patiently.

Mr. Chairman: I want everybody to have a chance to ask all the questions they want and go through the process as many times as they want. Nobody has to like it, but it is not a lot of heavy work. There is no heavy lifting involved. It is indoors. There is no snow, no rain. Just sit there. That is all you have to do.

Mr. Martel: What is happening here is how many ways can you ask the same question.

Mr. Morin: We have a good chairman.

Mr. Chairman: So far we have found a way to ask the same question four times, but we are going to give Mr. Mancini a chance.

Mr. Mancini: Mr. Patton, there were no other individuals between yourself and Ms. Artmont?

Mr. Patton: No.

Mr. Mancini: That is the point I wanted. She looked towards you and she identified herself?

Mr. Patton: She did not say her name.

Mr. Mancini: She looked towards you and said, "I believe you are looking for me"?

Mr. Patton: I believe that is what she said.

Mr. Mancini: Did you find that odd? You are sitting in a room full of people and just by chance someone is sitting across from you, looks over to you and says, "I believe you are looking for me."

Mr. Patton: I was told Ms. Artmont would be expecting me that day.

Mr. Mancini: Because of the instructions you received from Mr. Clamp, that was natural? That was something you would expect to happen because Mr. Clamp had said there would be someone there looking for you? It did not surprise you that someone would ask you, "Are you looking for me?"

Mr. Patton: No, it did not.

Mr. Mancini: I have one other question. When Ms. Artmont took you to the media studio room--that might be a 45-second or a 50-second walk--was there any conversation between the two of you?

Mr. Patton: No.

Mr. Mancini: Nothing? She walked you there and then you walked back. Maybe that whole process took a couple of minutes. There was no conversation?

Mr. Patton: If anything, I said thank you very much for her help and I left.

Mr. Mancini: Thanks again, Elie.

Mr. Martel: You are welcome.

Mr. Chairman: I am fearful, but Mr. Warner is next.

Mr. Warner: I understand the axiom that whatever time is available, politicians will find a way to fill it up, but I do not intend to do that, unlike my friend across the way.

I have just two areas, very quickly. I would like to return for a moment to the identification you showed. Did you say it was your driver's licence you showed?

Mr. Patton: When I opened it, there were two pieces of identification.

Mr. Warner: Can you tell us what they were?

Mr. Patton: One was a driver's licence and one was-- I used to work for Huronia Regional Centre in Orillia and it had my picture on it, an old card.

Mr. Warner: An old card from the Ministry of Community and Social Services?

Mr. Patton: Yes.

Mr. Warner: That answers something that had been raised earlier.

You have been in this occupation for a couple of years, as you mentioned. You served quite a number of people during that period of time, I take it?

Mr. Patton: Yes.

Mr. Warner: Generally speaking, what is the reaction of people upon whom you serve papers? Are they surprised by your presence, annoyed, angry? What kind of reaction do you normally get?

Mr. Patton: The majority of them are surprised, because most of them are vehicle accidents and they figure that it has already been settled by the insurance company.

Mr. Warner: Did Mr. Gillies seem surprised when you served him the papers?

Mr. Patton: No.

Mr. Warner: Ms. Artmont, of course, knew you were coming, so she naturally was not surprised, but Mr. Gillies did not seem surprised either?

Mr. Patton: No.

Mr. Sterling: When you were sent over, you have testified that the only identifying information you got was about Ms. Artmont being the only woman in this room. Was there any other identifying information about Mr. Gillies at all?

Mr. Patton: No, there was not any at all.

Mr. Sterling: They did not show you a press photo?

Mr. Patton: No.

Mr. Bossy: Was there ever any doubt in your mind when you arrived here that there would be any other place you should go to serve except room 151?

Mr. Patton: I was told to go to room 151. I did not know what was in the room other than it was 151. That is where I would meet Ms. Artmont and Mr. Gillies after 10:30. It is on my worksheet.

Mr. Bossy: When you left your office, you fully understood that it was a prearranged meeting?

Mr. Patton: Yes.

1050

Mr. Chairman: Thank you very much, Mr. Patton.

I point out to the committee that we are expecting a couple of documents from the law firm of Stikeman, Elliott, one being a legal opinion, which I think we have already seen because it was a legal opinion that was prepared for the predecessor of this committee, and they indicated yesterday they would provide us with essentially their definition of the Legislative Assembly Act, privilege and the environs and where you can serve documents and things of that nature. I think there was one other document they were going to send us.

There are two documents from the law firm that are still outstanding. To my knowledge, all other documents that we have been promised we now have. I am in your hands. We could entertain some discussion now on how to proceed, if you want to proceed. If you choose, we could strike a steering committee to come back with some recommendations this afternoon. What is your pleasure?

Mr. Warner: Just as a suggestion, since it is now eleven o'clock, a bit earlier than we had anticipated, maybe the steering committee could meet in a few minutes to discuss how we wish to proceed from here so that when we meet again at two o'clock, we will have some basic notion of what we would like to do and we are not wasting a lot of time.

Mr. Chairman: Yes. I suggest we could now have a general discussion for a little while, if that is your pleasure. Frankly, it has been my experience that it is better to have something on the table, some

recommendations on what to do. Then you can argue for or against that, rather than have a general discussion. But if you would like to entertain some general discussion about it now, fine.

If you would like to strike a steering committee and come back at two o'clock and deal with whatever recommendations it might make to the committee, we could do that. As a matter of fact, we could even do both.

Ms. Fish: May I ask a question about procedure? Can the clerk advise us how quickly he thinks there can be a turnaround of this morning's Hansard?

Interjection.

Ms. Fish: We have yesterday's.

Mr. Chairman: You can get a videotape in about 10 minutes. You can get a written Hansard on about a day to a day and a half delay. If you want the videotape briefly, you can get that by simply calling the communications office.

Ms. Fish: I am very familiar with that aspect. My question related to the written record.

Mr. Chairman: A written Hansard will be a day to a day and a half late.

Mr. Mancini: Mr. Chairman, why do you not just allow the committee to spend 10 or 15 minutes talking generally about what we have heard and maybe about what we want to hear further and see where things are starting to fall, and then the steering committee can meet.

Ms. Fish: May I just finish my second question on information procedure?

Mr. Mancini: I am sorry. I did not mean to interrupt you, Ms. Fish.

Ms. Fish: The second question I had was that you noted you were expecting some documents from Stikeman, Elliott. Do I assume that is by way of a written reply to questions I had asked about the timing and dates of Mr. Fleischmann's knowledge of the action on service?

Mr. Chairman: As I recall the two documents I would anticipate getting from the law firm, one would be their legal opinion on the service of documents and the second was, you had asked a number of questions about which they said they would have to go and check their files, about when they talked to Mr. Fleischmann, and they would get some information on that and provide that to the committee. Those are the two pieces of information I am anticipating from them.

Ms. Fish: Okay. I would just ask, if we have not received them, that the clerk could be requested to be in touch to ensure that we have the information in front of us by two.

Mr. Chairman: Yes.

Maybe I could start. I think it would be helpful if the steering committee were able to hear members of the committee a little bit before it makes recommendations.

For what it is worth, I would suggest that we have assembled a fair amount of information on the matter. We have certainly heard what you might call the principal players in it. To proceed from this point gets more and more difficult. The basic problem is, of course, that there are some conflicts in how people saw certain events unfold. From this point on, the most that I could see you doing is that you could attempt to get other witnesses to substantiate one side or other of the story.

I guess the critical point is that each of you has to make a decision as to whether the discrepancies are substantial enough for us to pursue or whether they are, in effect, as you have been told, recollections of events on given days and there can be differences of opinion on when phone calls were received, what was said and all of that, when there were no written logs to be pursued.

It is going to be very difficult, quite frankly, to substantiate one story over another. It means you will have to get other witnesses to events. In this instance, it strikes me, as a personal opinion, there are not going to be witnesses. There were no people standing around taking notes. You will get another recollection of the same version and we can do that, but it will not be an easy task.

Other people are named, for example, in the lawsuits. You may want to give some consideration to whether you want to call those. I point out to you, as I did during our hearings over the summer, that asking newspaper reporters to testify before a committee poses a unique set of problems, which other jurisdictions have wrestled with as well.

Newspapers and reporters are not the least bit loath to tell you what they printed in their newspaper, but they are often very reluctant to participate by way of disclosing sources and telling you what they heard in the hall. Members will be aware that at Queen's Park, as in a number of jurisdictions, the practice has always been that what is said in the press gallery lounge is considered to be off-the-record, privileged information. From time to time, members get rather astounded that it was not quite as far off the record as you thought it was. By and large, that is a tradition that is respected, that you can go in and engage in casual conversation with reporters and it will not get printed.

In Westminster, they have three sets of lounges, one where it is off the record totally, one where it is off the record but it is on the record--so ministers regularly go in and spill their plans and try them on for size--and one where it is a kind of mixed bag. Every parliament has some variation on that theme.

In terms of getting more legal opinions about whether it is reasonable to serve documents on members when the House is in session, in their offices or whatever, we can do that, but I think the next stage in this process is to bring somebody over from Westminster and have him testify at length or the chairman could go on his own--

Mr. Martel: Better still, we could do it in reverse.

Mr. Chairman: You will find a number of legal opinions on that. I would put it to you this way. The law is written in a rather arcane way. A legal opinion, in my view, does not make it so. Contrary to what some have said before the committee, I could get you two good legal opinions with directly opposite positions. That is why there is more than one lawyer in this world.

The legislators write the laws, the lawyers offer opinions on the laws and the courts decide what the interpretation should be. Just because somebody writes a legal opinion, it does not necessarily mean that is the exact intent of the law. That is the way the process works.

I am not sure it is terribly fruitful to pursue that, although I point out to you that we are paying a price for the way this building is operated. If, for example, this were at Ottawa, people would be asked as they enter the premises: "Why are you here? Are you here to see a member?" If someone said, "I am here to serve documents on a member or somebody on a member's staff," he would not be permitted to enter the building.

They have recognized that people are not immune just because they are members of a Legislature, but you cannot interrupt the proceedings either; so they have come to an accommodation. If you want to serve documents on a member, there is a location nearby where you can legally and without question serve documents. Members will then go back into the chamber, I suppose, and claim that it is foul. At least there is a clear procedural argument about where the privileges do exist. You will have to do a lot if you want to pursue it with respect to intent. That is going to be difficult.

People who have never been in this building before were here serving documents. You can judge whether they had any intent to do bad things or whether they did not really know what was going on. You can see the legal opinions as to whether that is okay. Those have been provided to you. I also think it is fair to say that persons who actually served papers were not thoroughly briefed on parliamentary privilege and were not aware of that.

1100

You could establish, if you like, intent and motive on the part of other staff people as to why they might have made certain arrangements, but again, I think that is going to be very difficult to document. You can try. It is your prerogative to try, but it is not going to be easy. From what I have seen, I think you are at a critical stage. You decide today whether you want to pursue this matter further, and if you do, the problems that come up will be who will be your other witnesses, who will be your other sources of legal expertise? You have had the Speaker, the Clerk of the House and ample documentation on anything that anybody could think of, so we tried to give you that much.

From this point on, it is largely a matter of argument over intentions, motives and things that we are not good at determining. Nobody is good at that because it is not a clear set of facts.

It does seem to me that at least the initial principal witnesses have been called, as many documents as we could think of have been brought to your attention, either having to do with what transpired in this particular incident or having to do with precedents that you should be aware of. Probably the best thing to do now is to take a rather short run around the room and see whether there is a feeling among members that we ought to pursue it. If that is the case, a steering committee probably should be struck to see if we can come up with a common list of witnesses. If that is not possible, the only way we could proceed from there, as we did in the summer, is you simply have to put motions. If the majority of the committee want to hear another witness, fine; if they do not, we will not.

Mr. Mancini: One of the items that was pointed out by Mr. Warner, I believe yesterday, is still high on my list of priorities, and that is whether

Ms. Artmont and/or Mr. Gillies more or less invited or "arranged" for the service to take place here. I do not think we have got to the bottom of that yet. What Mr. Patton told us this morning as to the fact he was sought out in the room would lead me to believe that he was expected, so I would like at least to have Ms. Artmont back for a few short questions to try to get that straightened out. I have some questions on that matter.

The other matter that I would like to have clarified somewhat more concerns statements made by Mr. McClellan during the debate that took place in the House where he said--and it was prepared for us in our files--that it was common knowledge and corridor gossip that these papers were going to be served. I would like to know how common this knowledge was and possibly who was bruited it about--using Mr. McClellan's own words--that this would happen. I think that would help the committee quite a bit and I think we could do this speedily, without using up a lot of time.

Mr. Callahan: I think you told Mr. Gillies and Ms. Artmont that they would have the opportunity to come back again if they chose to do so. I am not sure that calling them back will clear up any of the matters, but perhaps it might be a good idea to have them back because I think we are going to have to make some very hard decisions here. I do not think the decision is simply the question of whether there was contempt or no contempt, or breach of privilege or no breach of privilege. It is going to be a question of whether that privilege may well have been waived by an invitation to this committee by Ms. Artmont alone, Ms. Artmont and Mr. Gillies together, or either of them, or perhaps the misunderstanding simply that Ms. Artmont carried out that--

Mr. Chairman: I think I will just intervene for a second here. The privileges of the House are the privileges of all members, not any one, and no one member can waive those. To be a little more precise, the Speaker and the Clerk of the House, when they were before the committee, indicated fairly clearly that the House by motion has already decided the privilege matter, by its motion and by sending the second motion before this committee.

Essentially and a little more specifically, what the committee has been directed to do is to make a determination as to whether the proceedings of this House were interrupted unnecessarily and the privileges of the legislative body were therefore abused in some way. So the question of whether Mr. Gillies has had his privileges abused is really not before us. That has been decided by the House.

The second question, as to whether the Legislative Assembly has been abused, is really more pertinently what is in front of us. That is the motion that was passed.

Mr. Callahan: Mr. Chairman, that is why when we initially started, you will recall, you read out the motion. I asked you to read it again, and you very kindly pointed it out in the book to me, because I wanted to know what the issues were with reference to the question of how evidence would go.

I think the difficulty is this motion was passed at a time when everybody interpreted what had taken place as being in no way, shape or form even possibly prearranged. We have now heard the evidence, and had we known that at the time, perhaps the motion might have been more carefully worded and it might have been of a different wording.

Even working with what we have at the moment, the final paragraph of that motion says, "In view of the fact that the standing committee on public

accounts feels so strongly that it cannot be interfered with in the conduct of its business...." If, in determining whether the committee was interfered with, it is relevant as to whether or not you find on the facts that interference was prearranged, was determined in advance by one person or two persons, then I submit that is very significant. Certainly we could take the word "strongly" out because I do not think any one of us would be strongly upset about the interference. We would be strongly upset about that fact if that is determined as a fact.

So I do not think you can just set those aside and say that they do not matter. They do matter, and that is why, as a matter of fairness--because we are going to have to make that decision, like it not--we are going to have to decide what evidence we accept, and the question of credibility has been basic right from the start.

I certainly do not want to make a finding of credibility, or even consider making it, against a member of this Legislature or, for that matter, his executive assistant, unless we have given them every opportunity to be scrutinized by the member of this committee and also given an opportunity to explain why there are these discrepancies. I strongly urge you to consider that because I, for one, cannot lightly make that decision and I do not think any member of this Legislature can. I think they should be back for that purpose.

Mr. Sterling: I have listened to the evidence and there are two things I would like to say first. I was a member of the public accounts standing committee on that date. It just happened to be that I was substituted into that committee. I think the experience of the members was the committee in general and the members of the Legislature probably overreacted at the time. It seemed much more grievous at that time than it has to me ever since, particularly after hearing the evidence we have had before us.

There are a number of problems with the evidence, but I do not see the differences in the evidence that significant to really say, "This person did this," "There was an intent here," or "There was an intent there." On the one hand, you can say it is coincidental that every legal action took place just prior to something happening in the public accounts committee, but how can you prove the intent of Mr. Fleischmann, Mr. Brown, his lawyer, Stikeman, Elliott, the process server or Mr. Clamp? It is impossible to prove the intent unless we go very deep into the whole matter.

1110

There were two people. There was one telephone call which was very key to what happened. That was done on Monday or Tuesday. I think Mr. Clamp acceded to the fact that it was on Monday. We all make phone calls every day, and I defy anybody to remember all the details of a phone call two days from now, as to what was said or the exact words. Were the words this or that or whatever? I take what both of them have said as what they honestly thought was the content of that call.

Mr. Mancini: That is not what you said when René Fontaine was before us. You wanted him to remember every single word from months past.

Mr. Sterling: I do not think there is any question that there was a breach of privilege. I think that happened, but I agree with Mr. Sopinka in that I do not think there was any intention and I certainly do not believe

there is proof of intention. I do not think we could ever get to that proof if we sat for another month.

Mr. Warner: Mr. Chairman, in your opening remarks you identified what the difficulties would be. We have conflicting evidence. We have discrepancies in testimony. If we wish to attempt to unravel this whole thing and get to the bottom of it, to get the truth out of it, I suggest it will not be a one-day wonder. It is not merely recalling Ms. Artmont and Mr. Gillies and trusting that out of another couple of hours of grilling we will come up with the bottom line on this thing.

There are several issues and you identified them. One which was not mentioned, but is really part of the privilege question, is the allegation of intimidation. There is certainly the appearance of intimidation because of the nature of the lawsuit and the nature of the business which was being discussed by the committee. It has the appearance, but in order to confirm that, we have to establish intent.

As Norm says, that is not going to be easy. It is not an easy thing to do. I respectfully suggest that we may never be able to come up with a true statement as to who intended to do what. I doubt that we can prove the intent of either the law firm involved or of Mr. Gillies. If the committee is so inclined, we can go on further, but I suggest that first of all we know precisely what it is we are being asked to do.

We are talking about holding this matter over until April. That is the next time the committee will sit, because we will be dealing with freedom of information legislation in March, somewhere around March 22 or 23, because that is when we have arranged for the Attorney General (Mr. Scott) to be here to deal with that legislation. So we are looking at, I believe, some time in April and we are not talking about a day and we have absolutely no way of knowing if we can ever get to the bottom of it.

The one thing about which I am sure is that I firmly believe it is not proper to serve a member of the assembly in a committee. I do not believe that is acceptable. No matter what we end up doing, whether we decide to go on with the hearings or not, when we get to the report we have to make a very clear and firm statement about that and we have to find some way to serve notice to law firms, etc., that it is unacceptable to be serving members in committee.

Similarly, as you rightly point out, members do not have the ability to disregard or to shed away the privileges of the House. Members cannot take it upon themselves to invite people in to serve them in a committee. It would be unthinkable to serve papers in the chamber. No member in his right mind would invite people in to serve them in the chamber. Why on earth would you do it in committee? It does not make any sense to me.

I appreciate the concerns raised, especially by the Liberal team, and I find it frustrating, to be very candid, as I did through the Fontaine business, not to be able in that case after days and days and mountains of material to come up with a definitive statement of the truth. I find it frustrating. I do not like that.

I said it before when we went through the Fontaine business, I personally find it the most distasteful part of my job or my responsibility in the House, sitting in judgement of a colleague. I do not think that is why I was elected to come to Queen's Park, frankly. It has to be done and I

understand that. We went through it in the Fontaine business and we have gone through it here. One has to do it and I do not like it. Personally, it is not a satisfying part of my job, but one does it.

If the members would weigh it up rationally and logically as to what can be gained by putting this off until April to come back at it for X number of days--this is not going to be one day--as to how much good that serves us or serves the member who was aggrieved by what happened or anybody else, I think they might not wish to do that.

Mr. Chairman: Just before we proceed, I want to draw your attention back to the motion again. To illustrate the point, there is very little argument that the standing committee on public accounts on that morning was blown out of the water by what happened so that the work of a committee was set aside. There is no argument about that.

There cannot be much argument that the work of the assembly for an entire legislative day was rerouted. For those who wanted to get a piece of legislation through that was set aside, not to mention it does cost a few dollars to run the assembly in an afternoon, to televise the proceedings, to keep Hansard and keep the staff there, there was considerable disruption of the legislative process.

The facts would indicate that the motion per se can be resolved now. There is not much of an argument as to what caused that. There certainly cannot be much of an argument that the public accounts work of that day was set aside, as was virtually the entire agenda of the Legislative Assembly of Ontario. You could address yourself to that.

I point out to you in considering how we proceed from here that there are some practical problems, the first of which is we are restricted in the number of days that we can sit and we have made a commitment on Bill 34 that will carry us through so that if we are really lucky, we may deal with that in the last week of March and the first week of April. We do have some time where we could resume the hearings then, but we are talking about setting this business aside for a substantial period, coming back to fulfil our other commitments on the freedom of information bill and other matters and then picking it up.

For all intents and purposes, no action can be taken until the House receives a report and does something with the report. In the weird way that parliaments work, time will stand still until the House resumes. This committee cannot take any action on its own. We will report to the House and the House will decide whether our report was good or bad. Therefore, there are one or two practical problems that you might consider. Let us continue.

1120

Mr. Turner: If I may say so, this is a serious matter before us and it is something that has haunted these precincts for many years without any resolution. I suppose, simplistically, in a desire to be democratic and to make ourselves accessible--when I say ourselves, I use that in the universal meaning--over the years this building, the members, the offices and so on have been open to public access. I think it is the desire of all members to keep it that way, but by doing that, it is a rather strange set of affairs compared to some other parliaments which operate in a democratic way.

Having said all that, I am of the opinion that there is nothing much to be gained by hearing further testimony. I think everybody has testified to the best of his ability to recall what has happened.

I think--can I say this?--with the greatest respect, part of the problem perhaps lies in the lack of understanding of the members as to what our privileges may or may not be and what the privileges of the chamber and the House may or may not be. Until we as a committee or somebody makes a definitive statement, this area of grey will persist.

There is complete confusion, I am sure, in the general public. We heard examples of it in some of the testimony as to what can or cannot be done within the precincts of this building. There is not any doubt in a lot of other jurisdictions, because somebody has come up with guidelines, rules of procedure and so on. That is one of the things, perhaps the most important matter, that faces this committee, to make a decision on how we want this place to operate in the future.

It is a matter, as I said before, that has come up time and time again. It is not unique. It is not new. I suppose it will happen again until we as a Legislature get the news out to those people who visit this place from time to time so that they will know what the rules of procedure are going to be.

The personalities before us today are really a continuing parade of other people who have done similar things in the past but have not been formally brought before a committee. I can remember on two occasions people attending my office, having come to the building looking for certain members on whom they wished to serve papers, and there was just a total lack of knowledge on the part of those people. Not only that--I say this with great respect--there was a lack of direction perhaps, a lack of understanding and certainly a lack of knowledge of the rules of procedure and guidelines as to who could serve and who could not or on what matter. It is important that we, if we want to do so, come up with recommendations and make sure that they are well known, well publicized and circulated to everybody who may have a need to use them in the future.

On the other matters, as legal counsel mentioned yesterday, there was not any doubt as to what happened. There is some doubt as to why it happened, but the results are the same. There is not any doubt that I as an individual member or any other individual member cannot obligate other members or waive privileges. Certainly, our staff cannot do it, and I cannot delegate that authority to any member of the staff to do it on my behalf or your behalf. I think these are matters about which there is an understanding, but the large picture is that we as a committee and as a Legislature have to adopt some very definite rules of procedure on this type of thing or it is going to continue to happen, and we will be sitting here discussing the same thing with other people involved a year from now or maybe even a few months from now.

Mr. Bossy: I appreciate the comments Mr. Turner made. I know ignorance can cause problems, but at the same time, one cannot always be forgiven for ignorance. We should have Ms. Artmont and Mr. Gillies back for a very short period, just to clarify some things. The key element here in our decisions is to make sure whether this was actually prearranged. Was it prearranged? Who then had the responsibility, Mr. Gillies or Ms. Artmont, to know that it could not be done here?

Some members are veterans around this place and know the rules and the act pretty well. If the meeting of the server and the two people who were involved was beyond question prearranged, whether it was by ignorance or whatever, then that was conducive to what happened with the meeting of the standing committee on public accounts, what followed and disrupted the whole day. If the meeting was set up by Mr. Gillies's office, then that contributed to the total of the entire day's disruptions, whether it was in the committee on public accounts or in the Legislature.

Mr. Turner: The point is--

Mr. Chairman: Let him finish.

Mr. Bossy: I strongly feel we have to be very clear in our minds that the meeting here was preset. In other words, we have some conflicting statements between Mr. Clamp and Ms. Artmont as to how it was arranged. We have not fully understood how much Mr. Gillies knew about the final stages of the presentation.

There is a question I might ask. Is it coincidence that after Ms. Artmont was served, Mr. Gillies happened to be at the coffee urn and that it took place there? There was not a disruption in the committee because it happened at the coffee urn, or wherever it might be. Ms. Artmont never came to disrupt anyone at the table, the members of the committee here.

These are little things that may still linger in our minds for clarification. The key element is, was the arrangement to meet here? If that is definite, then that is the contribution it made to the total disruption of the day.

1130

Mr. Martel: The thing that confuses me, having been served a number of times, what I cannot put my head around yet is how one gets notice Monday, by Thursday is still not very excited about it and does not tell her boss that a law firm, which had served notice back in November, which the member raised in January that he could not understand what was happening, and you get a phone call from them on Monday saying, "We are coming in with some papers," I do not care what the papers are, one does not get a little excited about that.

My most recent confrontation with a legal firm was 18 months ago when I named Allied Heat Treat in the House and the next day their lawyer was on the phone here. Within minutes, my two assistants upstairs were trying to find me in the north because the guy was just threatening the possibility of a lawsuit. My staff was warning me that he was going to be phoning and so on.

Someone who has been served notice of an impending suit that has been raised in January by the member himself, the phone call comes in and his assistant does not even get excited. Quite frankly, I have difficulty believing that. I am being as blunt as I can. I do not believe it. I do not have sodium pentothal, or we are not allowed to use it to get at the truth.

I will not try, but it leaves a big question mark in my mind when somebody tells me that. I mean you have to be from Missouri to believe that the person did not get on the hummer, did not think to phone the member, did not think to protect the member--she is protecting the member by not saying a word? You really have to be naïve to believe that. I cannot question motives. That is not my function here. That is my concern about the evidence.

Another thing concerns me, and I think the former Speaker was correct. We have been ordered to look into the Laughren affair as well, if you want to call it that. It is getting to a point where people think they can just pick up the phone and start to harass members for any number of reasons. They might have done it inadvertently here. We have to clarify what the ground rules are. I think Sopinka agreed with me yesterday when I said that.

Our colleague Laughren gets 40 or 50 phone calls because he is chairman of a committee. You have a bunch of jackasses phoning and threatening him. Mr. Chairman, you look askance because I say that, but they were threatening him. The things they were saying to him were deliberately said, such as Mr. Cyanide, Dr. Cyanide, things like that. Who do these birds think they are that they can pick up the phone, phone a member of the Legislature who happens to be the chairman of a committee and go after him in that kind of way?

I think the former Speaker is right. We have to lay down the ground rules much more firmly and in a more understandable fashion so people know what their rights are in dealing with members of the Legislature. None of us wants to block that off, but I am getting a little tired of lawyers phoning and threatening me because they do not like what I said in the Legislature. I am getting a little tired of seeing my colleagues being harassed in that fashion, particularly by lawyers who should know better. Do not tell me a lawyer who phones you at your home or your office to go after you and threatens you with a lawsuit is not deliberately trying to finagle that you become a little more genteel.

That does not give members of the Legislature the right to malign anyone. I am not saying our privileges allow us to destroy someone's reputation. I do not know members who take that position lightly, but I am getting a little sick and tired of these characters who think they can do that. Out of all of this--I agree with Turner--we have to move to something that is pretty definitive so that people know how to act in terms of dealing with the Legislature.

Mr. Turner: And the members.

Mr. Martel: And the members. Oh, yes. The members know what their privileges are in a clearer way because I am sure there are members who still look at the Legislative Assembly Act and do not know what it means, that particular portion or the two portions.

Mr. Sterling: Some of them do not even read it.

Mr. Martel: It is not very clear. You could have read Lewis, the original Lewis. There is something in there which I think I read way back 20 years ago when I first came here. It has to be clearer so that everybody knows the ground rules.

The final point is, I do not know how one gets at the truth in sorting these out. I had difficulty during the Fontaine inquiry. I have difficulty now in trying to sort out who is--those are the sort of things you never get to the bottom of.

Ms. Fish: On the face of it with the motion, I agree with those who have said there is not a lot of argument about the question of service in this room being inappropriate during the course of committee proceedings. I think the committee can find in that regard pretty quickly.

I disagree with those who suggest there is still a very large and outstanding question of conflicting testimony. I disagree because I went back to re-examine the tapes of Mr. Clamp's testimony, which clearly amended and altered his filed affidavit. I also re-examined the tapes of Ms. Artmont's testimony in that regard as well. In my view, at the point at which we come to arguing evidence, I believe there are more than satisfactory grounds, based on the testimony before this committee under oath as well as the sworn affidavits, to have a finding that would indicate there was inadequate knowledge about the nature of the papers, there was not knowledge of service but rather of hand delivery and there was a prearrangement that was by way of request from the process server. For whatever reasons, the process server wished to make that arrangement for a Thursday.

What I think is completely inadequately treated at this point in the testimony is the issue of intimidation and the fact this was not service that dealt with a matter that was not before the committee that was being interrupted, but in fact was service on an item that was under investigation and on the committee's agenda and had begun that very day.

This lawsuit began with a notice of libel that was served to the entire Progressive Conservative caucus among others. I guess a lot of people can take notices of libel a lot of ways. Before this committee, Mr. Lederman made much of his law firm undertaking matters and undertaking them seriously. I did not notice that his law firm was proceeding with a statement of claim against the entire PC caucus. Yet Mr. Fleischmann and whoever his solicitors were at the time, perhaps Mr. Lederman was involved, saw no problem whatsoever apparently in issuing a notice against the entire caucus, not simply against one member and one member of that member's staff.

Right from that point, I think there is a real question as to what was being sought here in the action, how seriously it was being viewed by the person who was the plaintiff and how seriously it was being pursued by the law firm involved. I asked questions yesterday on the extraordinary timing of coincidence; a November 5 notice of libel being issued the day before the committee, of which Mr. Gillies is a member, was to investigate the question of whether a convert-to-rent loan was properly given to Huang and Danczkay and whether there was influence, perhaps undue influence, by Mr. Fleischmann on the provincial decision to award that loan. In substance, albeit in a different form, namely a news release, that is precisely the subject of the suit. That was precisely the work of the committee to be dealt with by motion November 6, one day later, and it was precisely the actual work of the committee to be undertaken Thursday, January 22, the morning of service.

1140

I also note that Mr. Gillies was the lead person in the House and on the committee querying this loan, engaging in questions of government ministers and was clearly the lead person intending to question, in his proper role as a permanent member of the public accounts committee in continuing its works in examining this expenditure of public funds, the way in which that decision was taken.

Listening to Mr. Lederman, I believe there are an amazing number of coincidences, Mr. Lederman would suggest, that I find difficult to believe. I am not satisfied at this point that we have had a full examination on the question of timing, nor am I in the least satisfied that we have had a full investigation on motive for intimidation. I think, if we are going to be pursuing the matter, we are pursuing not a simple recall of Mr. Gillies and

Ms. Artmont, but a recall of Mr. Lederman and a calling before this committee of Mr. Fleischmann and potentially Ms. Comeau as well, with regard to the issue of service.

I guess the question is do we feel that we can deal with the issue of service and wish to deal with the issue of service in the narrow question, or do we want to broaden that to an issue suggested by those behind me as potential prearrangement or some mitigating circumstance since we know privileges cannot be waived or, as I would argue, examine the service from the perspective of intent to intimidate and to interrupt not only the work of the individual member but, because of that member's clear role in the substance of a committee's work, the intended work of the committee.

I think we either agree to narrow and deal with the evidence and witnesses that have thus come forward as they have come forward and this afternoon argue evidence or we look to pursuing the questions that remain outstanding in the minds of some others on the committee. I would argue in my mind that I believe some very real question exists of clear and intended intimidation. The timing, by the way, on service of statement of claim, according to Mr. Lederman, could have been July 15. How interesting that the statement was served prior to the committee's being able to continue its precise work in the substance that gave rise to the suit in the first place.

I guess I would conclude by saying that for those who want to pursue the matter, I am quite prepared to pursue. I am quite prepared to make the arguments that I think are fundamentally necessary if we are to pursue on the issue of intimidation, but if we are to reach a conclusion that is a more narrow interpretation of the motion before us that would confine it to the question of service within this room or nonservice while a committee proceeding is under way, then I would argue that we can probably do that with the material we now have, the evidence we have now heard and can likely argue that this afternoon. Therefore, I would be at the will of the committee as to whether we were expanding this or not.

Mr. Morin: There is only one issue that really bothers me and that is the fact that an executive assistant did not tell the member of the pending letter.

Mr. Mancini: She said she did not know the content.

Mr. Morin: That is right. She said she did not know the content, and I find this extremely difficult. Let me tell you, if I had an executive assistant who would hide things from me, she would not stay too long with me, because it would not reflect too well on me either that she would hide that type of thing.

There is one witness I would like to see before us, and that is Ross McClellan. Ross says in a statement, "One of my colleagues said he had heard that Mr. Fleischmann intended to serve a summons on the member for Brantford at a public accounts committee meeting on Monday." Who is that colleague? Is it a member of the Liberal Party, the NDP or the Conservative Party? That would be interesting to know.

Mr. Callahan: I guess one of the oddities, even after two years of serving in the Legislature, is that I find it very difficult to get accustomed to these committees because we actually take upon ourselves the roles of judges. We deal with facts. Sometimes we decide to look into the question of intent; other times we do not. Thus far I have heard here statements by

certain members, "I did not believe this person," or, "I did not believe that person." We really leave those people out there as the flotsam and jetsam of the political system. We have done this on television today, Ontario-wide perhaps.

That was the reason I suggested, as the chairman had suggested very fairly at the outset, that perhaps Mr. Gillies--a member and our colleague in the Legislature--and Ms. Artmont should be invited back to try to answer those discrepancies. I must say I agree. I have some difficulty in accepting Ms. Artmont's testimony, but perhaps she has an explanation as to why those discrepancies are there.

I would prefer not simply to say, "All right, case closed, I disbelieve her," and leave Ms. Artmont out there all alone in the cold and not address the major issue. I suggest there is a major issue here. That was why, at the outset, I questioned the narrowness of the motion. You will remember the motion was put forward at a time when we all believed--I do not know whether we disbelieve it now--that Mr. Gillies had received this document and was so shocked by it that he interrupted the public accounts meeting and instituted the question of a full day's session in the House--not the service of the document.

I suggest it is very important that you find or that you investigate the question of the interference. I refer you to the motion, even looking at it in its narrowest form. Who caused the interference? Was it the service of the writ, or was it the prearranged program to have this writ served in this room and to allow Mr. Gillies to grandstand?

I am not for one minute suggesting that is the way we would all find it, and I do not do it lightly, because he is a member of the Legislature. He is a colleague. If I were in that predicament, I would want every opportunity to come forward and perhaps explain it. In fairness to Mr. Gillies, it may well be that he may not have even known what his executive assistant was doing. Perhaps she did keep it from him not to worry him. I find that a little difficult to accept, but I think he should have the opportunity to come back and perhaps clear this up.

If we are going to sit here for two days, four days or 10 days and listen to evidence, make absolutely no findings on the facts and just say, "The writ was served; technically, that is a breach, and that is it, end of case," then really what we are doing is wasting time. Not only are we wasting time, but we are raising the names of people unnecessarily over the television media and perhaps having their evidence scrutinized by the citizens of Ontario and then saying: "We are not going to decide anything. Clearly, because the document was served in this room, that is all we need to do. That is it."

I suggest that is not it. The issue is the interference. How did the interference come about? Was it the question of whether it was the document served, or was it the introduction of this statement by Mr. Gillies at the public accounts meeting?

1150

I do not think I will rest until items such as this are not dealt with in this particular forum. We have seen this happen with Elinor Caplan and we have seen it happen with René Fontaine. I am sure it has happened in the past with other members. It will probably happen in the future with other members. One cannot possibly deal with people's lives and reputations within a forum

such as this. It does not lend itself to it. We are not cross-examining many times; we are making political statements.

I am not naïve enough to believe that we as politicians do not have a right to politicize, but we have to be very careful. As Mr. Sopinka said, we have a privilege in here, we can politicize. We can make statements, as Ms. Fish did. This is not critical, Ms. Fish. I am just saying your observation is on the other side of the coin. Your observation is that Mr. Lederman was lying. This is what I got from what you were saying.

Mr. Taylor: She did not say that.

Mr. Callahan: All right, I am sorry. I know that is unparliamentary. I will take that back.

Ms. Fish: I draw the conclusion that it was an amazing set of coincidences that were produced and that we were dealing with a question of intimidation.

Mr. Callahan: I know we do not use the word "lie" here, so I will not say that. What I will say is that she was questioning whether Mr. Lederman's evidence to us was candid in that he told us there was no pre-arrangement, that the question of service was left entirely to him and not to Mr. Fleischmann. The inference is raised out of this, on the other side of the coin, that this is an attempt by him to get a leg up.

I suggest you have to make findings. If you want to sit here in this capacity, you have to make findings. If you do not want to sit in this capacity, let us change the whole procedure. The chairman has gone a long way in terms of trying to change the process of the parliamentary committees, but this is one area we have to look at very definitely, because we are hurting people unnecessarily. If we do not have the guts to make findings afterwards, we are in deep trouble.

Mr. Chairman: We have had a chance to go around the room. Let me conclude by directing your attention to a couple of things.

I will state the obvious. If you want to pursue the matter further, you are into a different set of circumstances. This committee, in its first round of investigation on this, did not do a bad job of putting the obvious facts on the table, ascertaining what happened.

What we have not done is gone into the field of intentions, motivations and things of that nature. I agree that is a very difficult field of endeavour for a parliamentary committee to get into. We do not have the traditions of providing evidence or cross-examination that a court does. I do not know whether Sinclair Stevens would feel today that the public inquiry route provides a faster, better and more efficient way of determining these matters. It is certainly more expensive, the rules of evidence are clearer and the process is better understood. Whether it is a better process is a judgement call.

I am going to ask you to give me a steering committee to meet in my office, room 349, at about 1:30 p.m., one member from each caucus, and we will see if we can put a set of recommendations in front of you at two o'clock, first, whether to proceed or not and, second, what witnesses the committee might be prepared to hear.

If you want to proceed, I think it is necessary that the principals involved be invited back. To be fair, you cannot invite back one side of the argument. You will have to invite both sides of the argument. If you think there is a dispute over intentions on the Ms. Artmont side, you have to invite Mr. Clamp back, to hear both sides. With regard to Mr. Gillies, I would certainly indicate that a member who has been discussed in this way has a right to come back here and have one final kick at the cat. If you want to pursue Ms. Fish's line of questioning, Mr. Lederman has to be given the opportunity to do that.

You have to make the determination as to whether you are prepared to go into further examination of the facts and motivation and whether this is the appropriate forum to do that. If you are to be fair, you will have to hear from all sides and provide them with that opportunity. We will need that steering committee to prepare a list of witnesses that will fulfil that function.

I will put it to you as bluntly as I can. We are not going to hear one side of an argument. If we are going to pursue this, we will hear all sides of the argument, as many sides as anybody can think of and as many motives, intentions, whatever, as anybody can think of. Basic fairness calls us to do that. Can I have one from each caucus to volunteer?

We will recess now and come back at two o'clock with the recommendation on whether to proceed, and if we are to proceed, who might be called as witnesses.

The committee recessed at 11:55 a.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

THURSDAY, FEBRUARY 19, 1987

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, February 19, 1987

The committee met at 2:25 p.m. in room 151.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: I have a quorum, and we are ready to proceed. I apologize for the slight delay. The steering committee had some discussions over the noon hour as to how to proceed.

I will go through these in order and report to you some consensus and some division. The consensus is that we feel we have reviewed the facts of the matter and we are now in a position to direct staff to draft a report on the process side of this issue. That is to say, we will talk a bit about the code of procedure, about the precincts of the Legislature, about perhaps some notices to the Law Society of Upper Canada to process servers and others about parliamentary privilege and the precincts of the chamber and interruption of proceedings, things of that nature.

We recommend that we do some work around notification to staff, to members and to security in the building on matters of privilege and contempt so that there is a better awareness. We would seek some provision that anyone who would be interested in informing members of some legal process under way be given direction by all staff to clear such documents and presentation of documents through the Speaker's office or the Clerk's office.

To that point, on the process side of the debate, we have agreement that staff should proceed to direct a report and draft it so that at a later date the committee can discuss and adopt the draft.

On the second phase, what we might call the specifics of this particular set of incidents, we have less agreement. The recommendation from the steering committee is that in the week of April 6, we will proceed with further hearings. We have a bit of consensus as to who should be recalled as witnesses and who may not be, but I am a little tentative about that.

If it is the will of the committee to proceed with further hearings in the week of April 6, if that should carry in the committee, we will then go to a list of who will be present as witnesses. I can put to you four names where there is general consensus that they should be recalled if we are to proceed. At the end of that list, I will go to motions from members of the committee. We will see which ones carry and which ones do not.

The first question I will put to the committee is the recommendation from the steering committee that we will resume hearings on this matter in the week of April 6. I want to hear your comments. I will go quickly around the room, then I think we had better have a vote on it.

Mr. Sterling: I think it is a ridiculous waste of the time of members of this committee. I understand what the Liberal caucus wants to do in terms of the political push they are putting on this. I do not think we are going to get any more evidence that will assist us in making a final decision.

If we are going to proceed in this area, I would also like to consider, and I know how you react to these kinds of suggestions, that we hire counsel to look into this whole matter and gather the evidence in some form so that questioning can take a more orderly path than perhaps happened in previous hearings. I have no fear of it, but I think it is a waste of time.

Mr. Chairman: The steering committee had considerable discussion, and it may be possible to have some general discussion continue, during that week, of evidence we have heard so far. It was also clear to the steering committee that from that point onward we would be getting very specific.

To lend a little bit of credence, not too much, to what Mr. Sterling had to say, that type of debate leads clearly to some recommendation about contempt of the Legislature, no matter of which of the witnesses you might feel did not present the truth to the committee. The end result would be that someone under oath before a legislative committee did not tell the truth. It can go nowhere else but for a member of the Legislature to be held in contempt. That would be the recommendation from the committee. Nothing would happen, of course, until the House voted on the matter, but that would mean ejection from the Legislature.

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If it were a matter of a staff person who was found to be in contempt of the Legislature, it would be the end of a career, I would say. If it were a member of the bar and we recommended that person was in contempt of the Legislature, I think the law society would have to take that matter up. In other words, we have no difficulty with the general concept around process.

If we move to further hearings, and you go much further than a very general debate about the specifics of it, you cannot fool around. There is only one road it can go, and in the view of the steering committee--I think I reflect this accurately--someone will get a recommendation which says that person is in contempt of the Legislature.

If it is a member, it will mean he is ejected from the chamber; if it is an employee, called before the bar and disgraced. If it is a member of the Canadian Bar Association, that might mean that the law society would be the agency that would take it up. It would not be a minor or a general accusation that would be made in the report; it would be very specific.

While you may not want to have counsel do that, I think that, for example, you would want to inform a witness appearing before the committee that the consequences of the hearing from that point on would be serious indeed and he would be well advised to appear only with a counsel by his side. Perhaps you are right; perhaps the committee itself may want to take the advice of counsel, but it gets far more serious past that point.

Mr. Sterling: May I say one more thing? This situation is somewhat different from a previous situation in which this committee has looked into the matter of the conduct of a member, in that there is a lawsuit going on at the same time. It is not going to be very long before we cross the boundary right into the middle of that lawsuit. I do not know how we are going to operate, keeping ourselves away from that matter and not taking sides in the civil lawsuit that is pending.

Mr. Chairman: There is one other thing I should add to the conversation before we continue. I see an increasing number of difficulties in our proceeding from this point.

We have not listed witnesses, but among those who have been discussed so far are those who may deem they have confidential sources and cannot reveal them and those who will be participants in a lawsuit aside from this matter. It may be difficult to keep those specifics out of the discussion, although I would try to do that. It is not going to be an easy road from here on in.

Mr. Warner: I think we have now stepped beyond the rational and reasonable into what can best and most accurately be described as a political fishing trip.

Mr. Martel: Dirt.

Mr. Warner: Obviously, if you are going to go on a fishing trip, you have to fish in every part of the pond. That is what will happen. I think this will go on for months. At the end of that time, I would say, and any betting person would bet, we probably would not be any closer to reality or the truth than we are today.

It is a total waste of a lot of our time, effort and money when there are other things to be done, but I know the political reality is that if I take the rational approach and say we should conclude the hearings today, some Liberals will run outside and scream that I am busy protecting Tories and that I am hiding from the truth. I am not about to give them that. I also know the political reality is that this is the Liberals' opportunity to get back at the Tories for the Fontaine matter.

Mr. Mancini: That has nothing to do with it.

Mr. Warner: You can shake your head, Remo. I am sorry, but I have spent my whole life in politics being candid, and I am not about to change that. My candid observation is that last summer the Tories had an opportunity to go after one of your guys and now you have an opportunity to go after one of theirs, and you are not going to let that drop.

The rational and reasonable approach to this matter is that we have heard evidence, some of which has conflicts in it. It is extremely difficult to determine what is fact and what is fiction. I doubt very much if another several months of hearings will unearth anything useful. The chairman has outlined what I think is absolutely accurate as to the potential. Let me add that should we fail to prove beyond a reasonable doubt that someone perjured himself or herself, what we will do in the process is to smear someone's reputation and damage it badly. I am very uncomfortable about that.

We happen to have a responsibility in here that goes along with the privilege. We have the great privilege of asking questions. We can ask anything we want. We have total freedom of speech in here, but there is a responsibility that goes with it. That responsibility involves not going on wild, political fishing expeditions. That is what you guys want, and I understand the motivation behind it, but please understand, and the whole assembly should understand, that we have now left that narrow confine of the rational world and we have moved into the political world where you are out to get somebody and there may be political fallout from that. It bothers me.

Mr. Mancini: The member can lecture us all he wants. That is his right, he has free speech here, but I wonder if he might reconsider the term he used--and I say this with great respect, Mr. Warner--when he said we are out to get somebody else. I wonder if you might want to reconsider that.

Mr. Warner: I will withdraw that comment because it is unparliamentary.

Mr. Mancini: Thank you.

Mr. Morin: And inappropriate.

Mr. Warner: I withdrew it because it was unparliamentary.

Mr. Morin: And inappropriate, David.

Mr. Warner: We will find out as this unfolds. I have been around politics long enough to be able to read the signals. I understand what you are about to do. Although it grieves me to go on with this, I also understand the arguments that the Liberals would use outside the door should I not agree to extend these hearings, so we will carry on in April.

Mr. Callahan: Mr. Chairman, I take exception to that as well. It is beneath the member to make a comment such as that. I have no intention of going out and discussing this with the press at all until after all the evidence is in.

Mr. Warner: You are not in charge of the team. Mr. Mancini is, and I know where his directions came from.

Mr. Turner: I have to oppose the motion based solely on my strong feeling that we have heard all the evidence that is pertinent to what we were asked to do. I think we have reached the point where we will not have any trouble reaching a decision.

One thing that bothers me--I have seen it happen over time, and I caution the members--is that, in my view, there has been a decline in the committee system and the conduct of some of the members in those committees. I am of the very firm opinion that we stand in danger of jeopardizing ourselves, our own credibility. I do not want to see that happen. We serve an important function here. As Mr. Warner says, we do have a responsibility. We have a responsibility to the Legislature, of course, to our constituents and to the whole province.

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I do not want to be a party to the disintegration, if you will, or the demise of the committee system as we know it. I think that the way it is set up serves a useful purpose and that we should keep it that way. Having said that, I just do not see any great advantage in prolonging this, although--well, never mind.

Mr. Martel: I really am bothered. I have been here 20 years and I do not think I got re-elected by taking on personalities, by taking on people. Every time we do that, we demean the whole parliamentary process. We really and truly do. Nobody has made more fun of the zoo than I, but I want to tell you, when it comes to taking on people as opposed to issues or policies, to me, that demeans us all. I think the whole thing could have been resolved. If there had been any smarts in Gillies's office on January 19, the whole thing would not have occurred. There were not very many political smarts demonstrated. That did not happen.

From here on in, we are into a game of people's reasons for doing things. The question really is, was it done to highlight someone's presence on a particular issue? That is what has gone through everyone's mind. Was that designed so that somebody would get a lot of press on a certain issue? When

you start to try to unravel that, it takes the wisdom of Solomon. I am sorry, I do not have that.

As to what her reasons were for not telling Gillies, why she did it or what not, that is what we are into from here on in, motives and what motivated people to do what they did. It is the same as what Ms. Fish said this morning about the motives of the legal firm. In the long run, how do you prove that the motive was to cause people to blanch or become fearful in a back way? Was it intimidation which she was driving at? I understand that but I do not know how you prove it beyond the shadow of a doubt, because, as the chairman says, from here on in, we are really into the whole field of--I guess muckraking is probably the best term you can use to describe it.

There is the questioning of the motives of Clamp, for example. I listened to him carefully. I think he did his job to the best of his ability. Maybe he should have known more. But you have to decide, did he do it on purpose? I do not know. I do not know what more you are going to get from him. He was cross-examined. The same questions were asked of each witness half a dozen times. Frankly, from here on in, I think we are into something beyond the terms of our reference.

But like my colleague to my right, I am not going to cut it off. If you want to go at each other, I will sit back and watch the performance. I just remind you, though, that when you are throwing that stuff around, whatever you want to call it, there is always a little that sticks. You had better remember it, because from here on in, somebody's job and credibility are on the line. On the basis of the information, I do not know how you are going to decide it. Maybe you are much brighter than I, but I do not know how. Having said that, I am not prepared to cut it off at this game because of the political ramifications if one attempts to try to nip it in the bud at this stage. You can have your day, but I remind you that some of it sticks.

Mr. Callahan: I am going to pick up from where I spoke this morning. To me, using a committee structure such as this to deal with the fate and the reputation of individuals is absolutely unbelievable. In the area I come from, courts have checks and balances. They have a judge hearing the case, lawyers advancing the case and the judge makes the decision. Here we are the judge, jury and executioner. I take it very seriously.

I also take offence somewhat--and perhaps as a new boy on the block, I should not--at the statements made that we are going to go along with this for political reasons. We are not talking about polls or votes or anything. We are talking about a colleague of ours in the Legislature. We are talking about a young lady who has worked--you can smile, Mr. Warner, if you want--

Mr. Warner: You are trying to get even. Come on--

Mr. Callahan: --but I am saying it seriously.

Mr. Warner: I am not that naïve.

Mr. Callahan: Well, give me an opportunity then, please. All right?

We are talking about a colleague in the Legislature. We are talking about a young lady who has spent a number of years in this Legislature in terms of working. We are talking about a lawyer who comes from a reputable firm, as near as I can figure.

Through just a couple of those speeches today, we have told Ontario that, as politicians, we are what they believe we are. We have different rules than the ones that apply to everyone else. In other words, why do we swear witnesses here? I would really like to know. Why do we swear them? It is a charade, because if you are going to take on the role of a judge and you are going to listen to the facts and you are not going to make a determination and clear those people or clear the air for one or all of them, then I suggest that you have done a disservice to them. In fact, we should stop giving oaths. We should just put a comic book or something there and ask them to come in and give their evidence.

Mr. Martel: Maybe we are prepared to decide today.

Mr. Callahan: Let me finish, please. They had their opportunity and I would like to get this off my chest because it really bothers me. This whole system stinks, if I can put it that way, and I do not know whether that is parliamentary or not.

You are dealing with human beings but you have got connected with it the broadest adversary system I have ever seen. You can sit here and ask questions. You can make comments. You can besmirch a person's answers by simply looking at the camera and addressing the audience and saying, almost as an aside, "How can you believe that?" Or you can make decisions, as you did this morning, Elie. It is not criticism because it has happened in these committees before. You say, "Well, I do not believe her." As far as I know, we have not heard all the evidence up to this point, because the subcommittee has now said we are going to hear more witnesses.

I can tell you this much, in a free and democratic society, if a judge in the middle of the case and before he had heard all the evidence--and you guys are judges, whether you like it or not--decided, "I do not believe that witness and you are going to be convicted;" I can tell you that any court worth its salt would set that judgement aside. If that were the type of institutions we had in terms of the judiciary, you can be damn well sure that there would be people out in the streets rioting because, in fact, they expect fairness.

I originally suggested this morning that Mr. Gillies and Ms. Artmont have the opportunity to come back because they were told they had that right. Certainly, there are discrepancies. Perhaps they can come back and explain what those discrepancies are.

Mr. Sterling: What are the discrepancies?

Mr. Callahan: Mr. Sterling, you are a trained lawyer. I would think that you have heard the evidence just the same as I have. How you can make a comment like that really makes me wonder, because there certainly are. It is as clear as a bell that there are discrepancies.

Now I go back to the issue we are trying to determine here. We are not here to determine the question of the technicality of a contempt by the service of a writ in a committee room. What we are here to determine is the clear wording of the motion that Mr. Barlow made. That was we felt so strongly that it cannot be interefered with--in other words, the workings of the committee. What interfered with it? Was it the service of the document? As I understand the evidence, the document was served over at the coffee table. Certainly the committee could have continued on with its work. What happened was--and the facts are clear on that and I do not think they are denied by

anybody--that Mr. Gillies came forward, as I am sure was his right. If, in fact, he felt that strongly, he had a right to speak up. I would support that and I think we all did support that. But that was, in fact, what interfered with the committee continuing. Then that resulted in a full day of debate in the Legislature and the House about this issue.

I am saying to you that the issue here is not as simple as just the service of that document. The issue has to be determined, and you cannot leave it hanging out there, because you leave Phil Gillies hanging out there, you leave Ms. Artmont hanging out there, you leave Mr. Lederman hanging out there and you leave these two fellows from Metro Process Servers hanging out there.

If I were sitting at home as part of the public, I would say to myself: "I have watched this scenario, and suddenly the decision is: 'Okay, guys, maybe somebody did tell an untruth or whatever under oath. We are going to forget about that, take the short-term view and cut it off right now.'"

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If that is the case, it seems to me the purpose of the committee really becomes of no value at all. The committee in fact has the opportunity under privilege, a very sacred thing given to us so that we can carry our activities as parliamentarians, a basic and essential right, to sit before the TV cameras and ask questions of people who come here to give evidence on an issue they feel is going to be resolved and who think that their version is going to be found to be correct or that they are going to be exonerated. As Ms. Artmont or Mr. Gillies, I would not want to walk around this building without this matter being determined, because I would walk under a cloud.

I do not think that is fair. As far as I am concerned, I think that in giving Mr. Gillies, Ms. Artmont and anybody else you want to call the opportunity to come--perhaps they are going to rehash what they said or perhaps they are going to come and say, when the question "Why is there this conflict?" is put to them by whomever, "I did not think about that and here is why." If they do that, then I think we will have done a service to them.

Mr. Martel: What you are saying is you do not believe them now?

Mr. Callahan: No. I will tell you quite candidly--and you can believe this if you want or not--that if I had felt the case was not over, I would not have even thought about it. I have considered the facts of course, because I thought we had ended our witnesses. If there are more witnesses coming, I am prepared to reserve on that. I may have my doubts or my feelings about particular pieces of evidence, but I think that if we are going truly to exercise our functions as judges and, more important, as human beings, we are going to wait until we hear it all and not make decisions based on what we have heard up to this point.

I think that is very important. Frankly, this is a type of Star Chamber. With the greatest of respect, I have to call it that because the process here really does not provide for safeguards that are built in. I know you guys do not like lawyers, but the law does in fact build in safeguards so people's reputations are not besmirched. Lawyers have privilege in a courtroom. They can say what they like. They can put outrageous questions to witnesses, and if it were being carried on television--I suspect that is the reason some courts will not allow television in there--a person's reputation could be besmirched by innuendo, without even being guilty of anything.

That is my rationale. I recognize that things around here are done a little differently, that in fact people try to score points, but I want to give everybody an opportunity so I can make a decision and clear the air. If there are political brownie points to be made, I suppose there is a political side to me as well. But, first and foremost, the question is that the issue should be determined for them, for the people who came before us, but equally or more important, for the people of Ontario who are watching and saying: "I saw an oath delivered there. I heard evidence given. I hear my member of the Legislature saying, 'Let us forget about that; let us not determine that issue.'" Surely to heaven they will turn off their television set and not watch again because they will figure this has all been a charade, this oath-taking, if we do not in fact determine that issue.

I have been long-winded as is, I suppose, my bent, and I sometimes get chided for it, but I really think that as a result of whatever happens here, the committee of the Legislature that deals with the mechanisms of this Legislature has to review the way it deals with a particular issue when a person's reputation is at stake. We have already had two of them and we have not changed the way we deal with them. We now have a third possibility, a possibility of a law firm, a member or a staffer being besmirched, and I just do not think that is fair. They do not even have an appeal from us to a court of law. Unless they can have our decision set aside on the basis that we did not act judicially, I suspect that might very possibly be done, because the procedure here is something foreign to me. I must say I find it very difficult and very uncomfortable to sit in it. I try to do my job but I do not think the safeguards are there.

I urge you to try to view it from that standpoint. I urge you, as well, not to make a decision. You have often heard a judge tell a jury, when they recess for the day: "Do not make a decision today, until you have heard all the facts, because it is difficult. Human nature is that way." If you have decided that someone is lying and you have told everybody, all and sundry, your pride is then going to keep you from leaving your mind open to determine maybe when these witnesses come back that perhaps they have explained it to your satisfaction. Perhaps there is an opportunity for you to then make a different choice. But if you have espoused it and voiced, you are stuck with it. Unless you have a good deal of humility you are not about to change your view.

One final item. The thing about this committee system that bothers me is the factor that we are split up in political parties, with certain numbers. We are allowing, I am sure, our political affiliations and our political ideals and whatever, to interfere with the judgement-making process. But I would hope to God that you would not allow your political ambitions or your political party's background to besmirch a person or to find that they were not telling the truth, on the basis of that political affiliation.

You can do what you like with the issue itself, but in terms of deciding the facts, I would hope you would decide it on the basis of the facts and the facts alone. If you do that you can feel good about it. If you do not, quite frankly, I would feel dirty going home, because I would feel I had not served my fellow human being in a fair way.

Ms. Fish: I feel very clean indeed. I take my responsibilities in this committee and every other committee of the Legislature very seriously. I am very mindful of the privilege that is accorded to members to question and to speak at committee, and of the responsibility that we bear when we are investigating any matter, most particularly those matters that may involve

witnesses coming before us, and especially when those witnesses are under oath.

I feel that what we have as a choice in front of us today is not a choice of dealing with the issues or not dealing with the issues. I think it is a choice of whether we feel that we have, in fact, heard the evidence, heard the witnesses and are in a position to argue the case based on the evidence. With the greatest of respect, Mr. Callahan, I am one of those who believes that we have heard the witnesses now and I would be prepared to enter into argument, beginning this afternoon, on the evidence that we have heard; argument that would deal with the issue of service, that would touch upon a concern by any other member that might be raised. I have heard much raising of questions around Ms. Artmont, for example. The issue that concerns me is whether there was an attempt to disrupt a committee and an attempt at intimidation to prevent a member or a group of members sitting as a committee, from dealing with an issue of substance properly before that committee.

For example, when Mr. Callahan makes reference to his concern that perhaps the interruption of the committee was triggered by Mr. Gillies' raising a question at the table of the committee; I would note to Mr. Callahan,--I was at the committee that day--that the purpose of raising the question was to ask the chair whether, in view of the service, it was possible for the committee to proceed to deal with the investigation of a loan being given to Huang and Danczkay under the convert-to-rent program and the question of Mr. Fleischmann's role in the determination of that loan approval.

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That leads me directly to the question of whether there was an attempt, by virtue of proceeding in this matter in this way at this time, to prevent a committee or a member of a committee from dealing with matters properly before the committee.

It is my view that within the frame of what we are likely to determine--perhaps "determine" is the wrong word here--what we are likely to be able to find out, given that we are not a court of law as we know the term, that we are a legislative committee and that we have people coming before us under oath, all these issues or a more narrow consideration of service only can be dealt with on the basis of the evidence that has been heard to date.

I argue that it is reasonable and responsible to move in that direction. If there is a wish to go beyond, there is a question in my mind as to where we will end up. I was very struck, Mr. Chairman, by your caution to the committee that in proceeding down this road not only would we likely become rather more formal--and there may be some benefits to that; perhaps, by the way, that is something we should consider more generally for a committee--but also we would likely be in a position of having to find in a very serious way directly questions of contempt and/or, by virtue of the process itself, as Mr. Callahan has suggested, to engage in a continued pulling of people before a committee with a concern on the lesser levels of reputation and conduct.

I just want to stress that for me none of this is a question of damping down, none of this is a question of refusing to treat of evidence and none of this is a question to confront issues or questions head on. I believe the evidence is in to the likeliest extent we are ever going to find. I believe that the issues do touch upon credibility of witnesses and that even formal courts of law are asked to make that sort of judgement on occasion in cases. There is a question that arises in the mind of those hearing evidence, and I am of the view that we can reasonably and properly begin argument on the evidence now in.

I note that because we have had evidence from some of the key players and because, among other things, we have seen at least one area where evidence conflicts with affidavit. That is in the case of Mr. Clamp. This leads to an opportunity, in my view, to make an argument on evidence that possibly resolves what might otherwise have appeared on the face of things to be contradictory statements.

I hope we will be able to reflect upon the responsibilities we have as legislators in this matter and the responsibility upon us, with the privilege we have to be able to move within the frame we have been given and deal with the evidence. I might simply close by saying that was the view I advanced as a member of the steering committee, and the recommendation to proceed was not a unanimous recommendation of the committee. It is my belief that the responsible course of action is to move on to argument on the evidence and base our findings on evidence as it now is.

Mr. Chairman: Do any other members want to participate in this part of the debate?

Mr. Sterling: I have heard it said a number of times that there are significant conflicts in what the witnesses have said. In reviewing the material prepared for us by our research officer, Mr. Eichmanis, and taking it in context with the evidence, I would like to know where the conflicts are in this evidence which mean anything. We are dealing with people. All the witnesses are trying to recall from memory what happened to them either three days before or now, I guess, three weeks before. There are what I consider some minor differences in the evidence given.

For instance, today Mr. Patton said that he went back to the office. I asked him if he had any conversation with Mr. Clamp. His answer was, "No. I gave him my work and went home." That very night, Mr. Clamp went to the law offices and made the affidavit about what happened in this room. How did he find out? There is a conflict there in terms of what happened. Mr. Patton obviously did not remember the conversation that, I assume, he had with Mr. Clamp as to what transpired at the back of this room.

There is other evidence as to whether Ms. Artmont was phoned on Monday or Tuesday. The evidence given by Mr. Clamp was he was not sure but it could have happened on Monday. There are a number of details like that, which I can understand. That is human nature. You try to remember back to a conversation you had even yesterday. There are going to be differences with the person to whom you were talking on the phone, regardless.

If you are dealing with the credibility of Ms. Artmont in this whole matter, what transpired in this whole thing all comes down to that phone call. The other part of it is the intimidation part and that is where you are going to get involved in the legal matter.

I just do not understand all these conflicts that are key or germane to the issue that everybody is talking about. What are they? I would like the Liberal members to bring them forward.

Mr. Chairman: I think we have had a turn around the block on whether we will proceed. I am going to put the question to you. The recommendation is that we will proceed and we will continue the hearings in the week of April 6. Those in favour?

Ms. Fish: Excuse me. I am sorry; I should have said this in the

course of my remarks. You had indicated when we began that you hoped that members would hear the evidence right the way through.

Mr. Chairman: Yes.

Ms. Fish: They are simply cautioning that there may be conflicts of responsibility in the week of April 6. Should that motion carry, I hope there will be an appropriate consideration of the difficulties individual members may face.

Mr. Chairman: Agreed. The recommendation is that we will continue the hearing process and it will begin the week of April 6. Those in favour? Five. Those opposed? Five. The motion is lost.

Mr. Callahan: Mr. Chairman--

Mr. Chairman: No. When it is a tie of five votes to five votes, the chair votes in the negative. The motion is lost.

The hearings will be concluded as of today. Where that leaves us is we have previously given direction to staff to draft a report along the lines of process. You will see the draft of that as soon as it is done. I take it you will want to see that as soon as it is ready. The committee will actually be in session prior to that, so we may be able to schedule some hearing time so you could discuss the draft report. The difficulty may be, as Ms. Fish has just pointed out, that we will have some conflict problems with other committee work that is being done around the chamber.

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I will attempt to provide each member of the committee as it is now constituted with copies of the draft report from the staff, and we will then try to find an occasion when we can set aside some time to deliberate on that. Is there any further business?

Mr. Warner: Would you just clarify this? I understand the committee sits next on Monday. It does not normally sit on Monday but it will.

Mr. Chairman: It begins the work on March 23, and we may be scheduling hearings on Monday and Tuesday of that week. We finally have the Attorney General (Mr. Scott) available. I suggest we take advantage of that.

Mr. Warner: Yes.

Mr. Chairman: We have him scheduled for the following week and we have confirmation of that, so we will have perhaps Monday and Tuesday hearings. The reason I am being a little tentative is that this Attorney General has been confirmed to attend before this committee on previous occasions.

Mr. Warner: Yes, and then he does not show up.

Mr. Chairman: His plans to show up change. The best I can tell you is it will be that week. We will give you an official notice of the meeting as soon as we can.

Mr. Warner: Do we know what we will be doing on the Wednesday?

Mr. Chairman: We may be doing the bill. We may be travelling. I do not know.

Mr. Warner: The only reason I ask is I may be away for a little while and it would be kind of nice to know.

Mr. Chairman: We will notify you as soon as we can.

Mr. Warner: That is fine.

Mr. Martel: Do you know if you are bringing Ms. Gigantes in, or am I coming?

Mr. Chairman: I will know that as soon as the whip tells me.

Mr. Martel: All right. There is another question I want to raise. Is Mr. Forsyth making the arrangements for those of us who are going to the other conference?

Mr. Chairman: Yes.

Mr. Martel: Are we leaving on the 11th?

Mr. Chairman: I think he would best make those arrangements with you privately, as soon as we have them.

Is there any further business?

Ms. Fish: When will we get Hansards to review the evidence?

Mr. Chairman: You have some of them now. They are coming in. Mr. Forsyth, can you help us?

Clerk of the Committee: Either by the end of tomorrow or the first of next week.

Mr. Turner: Will they be delivered to the office?

Mr. Chairman: Yes.

Ms. Fish: Just so I understand the procedure, we will argue the evidence and consider the staff report on the general question of service beginning the week of April 6.

Mr. Chairman: If it is possible to arrange discussions on the draft report earlier than that, I will try to do that. It may not be.

I am just trying to put you on notice here that I am aware that members are attached to other committees to consider particular bills, for example. I will try to find the time when we could get a couple of hours, or an afternoon or a morning, to go over the staff report, argue the evidence and finalize that report. If that is not possible until the week of the 6th, it is not possible. I will try to get you the information as soon as I can.

Ms. Fish: But we will clearly have the Hansards in ample time to review and examine it before we argue the evidence.

Mr. Chairman: Yes. We will have them in the next two or three days.

Mr. Callahan: I want to make two points, very briefly. First, by my vote, I assume neither Mr. Gillies nor Ms. Artmont wish to have an opportunity to come back, as they were invited by the chairman, to give an explanation.

Mr. Chairman: They will not.

Mr. Callahan: I assume from the comments of the Conservative members that they do not wish that opportunity and I assume they know that as a fact. That is one.

Two, whatever way we cut it, I presume that the issue is not to be confined to the question of the technical contempt, but we are going to have to make findings of credibility in determining whether the interference was caused by other than that technical delivery. That will be the area I certainly will be addressing my arguments to.

Mr. Chairman: Let me try to clarify it, because I do not think it would serve any of us well to be confused about this. You will get a staff report back, and a draft report which will look something like this. It will most likely include almost all the documentation you have received in the course of the deliberation. That is normally part of our process.

There will be a draft report which will talk about procedure, the precincts, notice, what privilege and contempt are, whether staff should be aware of it, who should be informed about that, and indications probably that we should do some work notifying our own security people and others who might visit the building to clear such documents with the Speaker or with the Clerk's office. The staff report will stop just at the point, I suppose I would call it, where political deliberations begin.

If members want to add the section of commentary on someone's behaviour or something of that nature, you are quite free to put it in the form of a motion and we will try it on for size. If I see consensus that staff could put together some documentation or even some commentary, I would be happy to do that. I am always reluctant to have staff of the committee write anything that might be construed as partisan in nature. If you have something you want to say and you think you can make it fly, you are free to put any motion you can dream up in front of our noses. We are free to accept it or reject it.

Is there any further business? The committee stands adjourned.

The committee adjourned at 3:15 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

MONDAY, MARCH 23, 1987

Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

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Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Caplan, E. (Oriole L) for Mr. Mancini

O'Connor, T. P. (Oakville PC) for Mr. Turner

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, March 23, 1987

The committee met at 10:15 a.m. in room 230.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: Okay. We have a quorum.

Hon. Mr. Scott: What Mr. Sterling calls "the damned Attorney General" is here.

Mr. Chairman: I did not think it was official yet. That was just conjecture.

There are a couple of procedural points before we begin. We have a bill that is reprinted to show amendments proposed by the Attorney General (Mr. Scott). I propose to you that it might facilitate matters somewhat if we proceed to use that as the basis of argument as we go through. Unless I have some objections, the proposal is to take the reprinted bill, which has some of the amendments that have already been proposed by the government, and proceed with that as our working document. Are there any objections to it?

I have asked the minister and each of the critics to try as best they could to provide us with amendments they intend to table during the course of clause-by-clause discussion of the bill. I believe I have them. I wish they were marked a little clearer, but in the case of Mr. O'Connor and Ms. Gigantes they are marked very clearly. Only some others failed. By process of deduction you can assume the package you have that is unmarked comes from the government. I believe Mr. O'Connor has marked all his amendments, and Ms. Gigantes has marked her amendments. As you can see, there are three distinct piles to be dealt with.

Mr. Sterling: A number of the amendments we may put forward depend upon what comes prior to them, and therefore by no means are the amendments from Mr. O'Connor the final number of amendments you may receive from us. In fact, four other amendments which do not have my name on them, but which you will have in your hands shortly, are being presently copied.

Mr. Chairman: I am just going to make a plea to you as we start this. I am aware that this has the potential of being a long and cumbersome process. You will help everyone on the committee, and perhaps your own cause in putting your own argument, by simply doing us the courtesy of letting us know what amendments you have as soon as possible and trying to identify them clearly, because we are going to be shuffling papers a great deal in the next few weeks.

If you are interested in winning an amendment, I suggest to you that it is in your own best interests to (a) get it in our hands as quickly as you can and (b) identify it so we can find it as we attempt to process this.

Amendments are always in order in committee, and I cannot help it if people want to mumble some amendment, but I suggest to you that you are not going to get very far unless you do us the courtesy of informing everybody on the committee what your amendment is and where it will be.

I will go this far. Even if, as Mr. Sterling has just pointed out, there may be some that are conditional on something else carrying in the bill, it would be real helpful if we had as much of that as we could. You may never move that amendment, but at least we will have it and will not have to stop the proceedings and run out, make copies, come back in and start again. If you can get the paper flow moving and get copies of amendments which you have in front of us, you will assist us slightly.

Are there any opening remarks?

Hon. Mr. Scott: Can I make one observation? I am glad we have the opposition's amendments, which I take it are being copied now, and I look forward to looking at them. We have given thought to the reality that there will be not only the amendments that are presented today but also other amendments that members will want to introduce as we go along. In so far as they are technical or drafting matters, we will try to deal with them.

We are going to have to ask the indulgence of the committee on substantive amendments, to apply the two-hour rule in a bill like this, for the reason that an amendment of one section, as all members will know, may have implications across the entire bill. We have a group that is designed and in place to assess these amendments as they come forward, but in this bill it will not always be an easy matter to respond without some time; so I ask the indulgence of my colleagues in doing that as we move ahead.

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Mr. Chairman: Just before we begin, I would point out the obvious. The thing has been in front of your nose for more than a year. There are not a lot of secrets involved in this. I think you have had a reasonable opportunity to peruse it. If there are parts of it that you do not like, you cannot claim that you have not had a chance to see it before. You may not have read it, but the best we could do was to put it in your hot little hands.

The reason I am asking, as politely as I can, that all amendments be tabled this morning is that we will shorten these delays as much as possible. It is not to anybody's advantage to pull some surprises here. If you will give us as much advance notice as possible, all you are doing is making the process work a little better. That is all.

Mr. Martel: For openers, the government could give us a bill that might work.

Mr. Chairman: That is always possible too.

Mr. Martel: That would be a real surprise.

Mr. Chairman: It would be a first. Are there any further comments that anybody wants to make before we begin?

Mr. Sterling: Normally, when you go through a motion on a particular section, the bill is usually such that it does not depend as much on sections that come after as this particular bill does. There may be a need for us to

retrace our steps in certain circumstances. Therefore, my colleagues and I are willing to go back to a section if that previous section has been triggered basically by a later change or something of that nature. It is almost impossible in this bill to avoid it--where you have so many different principles meshing together, or trying to mesh together--and to foresee everything accurately at the time you consider a particular section.

Mr. Chairman: The one suggestion I was going to make to you for that reason--and for a couple of other scheduling reasons, which I am aware we are also going to have problems with; this will be a little unusual--was that we try to make the first part of the process as informal as possible. I realize that you want to move amendments, and we would like them to carry.

Where I see a bit of difficulty is that we could move amendments in the early sections of the bill. Those amendments might carry. They might cause great changes throughout the bill. In the latter part of it everybody might decide that was not a good idea and we might want to go back. I do not want to get stuck in the position where we have to lift matters from the table, reverse our positions on previous questions and all of that. I remind you that we are in committee, which allows us to be reasonably flexible in these matters. I intend to be as flexible as I can be.

What I would like to do is to proceed through the bill in as informal a way as possible. In the end, at some point, I remind you that we will, have to take formal votes on the sections. What might be a reasonable way to proceed is to go through it and to try the amendments on for size, so to speak. Where there is some great philosophical point to be made, you may want to have a symbolic vote, even though you know you are going to lose. I would ask you to keep those to a minimum, if you can.

I would appreciate it if we would always allow the latitude to come back when we have finished the bill and go through the formal votes at that time. If you want a straw vote to try it on for size or something like that, or if you want to try some wording on, we can do that as we go through it, but I would like to retain the ability on the part of the chair to come back at the end of the exercise and to do the formal voting process then. I think that doing it that way might facilitate a little timetable problem we have, some complexities in the wording of the bill.

Is that an agreeable way to proceed? It is understood that the formal votes on the clauses and amendments will be held at the end of our discussions. We will allow everybody as much latitude as we can to put amendments in, to try them on for size, but the formal voting process will be when we have gone through the bill once.

Mr. Martel: You are not going to accept amendments until we have gone through it once?

Mr. Chairman: I am going to allow members to place amendments. Let me put it that way.

Mr. Martel: That worries me.

Mr. Chairman: But you will not get to vote on them.

Mr. Martel: What worries me is that if you are going to do that, who is going to keep the score-card?

Mr. Chairman: Let me try it this way. I am going to try to sort it out so that as we go through, where we have consensus and where we have agreed on a change in the bill, we will mark that. Where we have a division we will try to mark that. You will make up your own minds whether you want to force that division into a formal vote or not. You may not want to put an amendment at some time because you know it is not going to carry. On the other hand, you may feel some great philosophical point is at stake and want it recorded; so we will allow you the opportunity to do that.

We will move through the bill by consensus. We will hold the formal votes at the end of the process. Is that understood and agreed?

Hon. Mr. Scott: May I make a suggestion that may be completely useless? Your experience will tell me whether it is. Having just had a quick look at some of the amendments which the opposition parties have put forward, it is apparent to me that some are very fundamental and reach to the heart of the bill and some are really textual or not fundamental.

It seems to me it might be orderly to have a caucus of the three parties, a representative from each, to decide which are the fundamental amendments and then put and debate them first. Then, when the framework of the bill is fixed by the committee, it can move into the textual stuff. For example, the Conservatives have an amendment that will separate the commissioner into two parts, which is going to involve, if accepted, a wide variety of textual amendments subsequently. Maybe we should decide first if that is the will of the committee. If it is, we know what we are doing about the structure; if it is not, we move on.

You are much more experienced in these committees than I am. Are you going to pronounce that a really lousy idea?

Mr. Chairman: Actually, it is not a really lousy idea.

[Laughter]

Ms. Caplan: Hansard should note laughter.

Mr. Chairman: We may want to use the steering committee concept. It strikes me that might be useful. Those of you who know me know that I do not really fancy a whole lot of argument on extraneous points; I would rather argue the main points of something. If a steering committee could assist us in identifying where the main division points would be, that might be of some assistance.

I suggest it might not be terribly productive until we have had a chance to go through all the amendments, and perhaps even take a quick run through the bill, to see if we can flush out where those dividing points might be. Then a steering committee might be able to identify for us what the critical points would be.

At some time, we do have to identify those points. It strikes me there are many ways to go in this bill. If we are never able to identify which of the options has the support of the majority of the committee, there is no hope. On the other hand, if we can identify those fairly readily, we will have some knowledge of what we have to work with.

Mr. Sterling: It seems that whatever is going to happen, we are going to go through this twice.

Mr. Chairman: Yes.

Mr. Sterling: Therefore, I would prefer--and I do not know how we can work this in the structure or whatever--to take a vote as we go on each of the amendments. We would limit debate within our own caucus, save and except for very key points in terms of the new amendment to an old section, going through it the second time. I do not know any other way to do it.

Mr. Chairman: I think I can accommodate that by simply letting the chair look for consensus on the matter and carrying it that way. If you cause me--and you have a right to, if you want--to take each amendment as placed with a formal vote, we will be here for another year. Frankly, the only hope I see for getting this bill processed is to adopt some kind of consensus move as we go through the first time. The second time through we will have the formal votes, you will decide whether you want to place your amendments and you will be the ones to decide whether that is a fast process or a slow one. Frankly, I do not see much other way to proceed with it.

Ms. Gigantes: Is it our intent this morning to continue what we started earlier, the walk through the bill?

Mr. Chairman: We have been walking for a year. I would not mind a slightly faster stroll.

Interjection: Can we canter through the bill?

Mr. Chairman: Do you want to canter through the bill?

Hon. Mr. Scott: We are at section 14. I think it would be useful to take the committee through the rest of the bill, but it is up to you.

Mr. Chairman: Are we agreed that we would like to do that?

Ms. Gigantes: If consensus is what we are after, it may be.

Mr. Chairman: If we are agreed, we can do that. We will pick it up at section 14.

Hon. Mr. Scott: I think we finished section 14.

Mr. Chairman: We will start with section 15.

Hon. Mr. Scott: Mr. White and Mr. Ewart are with me. I am going to ask them to carry on the exercise.

Mr. McCann: My recollection is that we had completed to the end of section 14, and that would make section 15 the next one for consideration. It deals with an exemption from disclosure for documents which would have various harmful effects or which would "prejudice the conduct of intergovernmental relations" or "reveal information received in confidence from another government or its agencies."

1030

Hon. Mr. Scott: Actually, if you take sections 15 and 16 together, you will see that what we are doing here is allowing a permissive exception--"A head may," not "A head shall"--in favour of other levels of government. It is a traditional exception in most freedom-of-information

legislation. The important thing to notice here is that a municipal government is not included as a level of government. This exemption is designed to protect intergovernmental relations between the provinces or with the feds or with international organizations. In substance, when those agencies of other governments provide information to us in confidence, we will be able to say, "We are empowered to take it in confidence," and not have to say, "No, we cannot take it in confidence," and thereby run the risk that we will not get it. I think that is really the issue in sections 15 and 16. Am I not right?

Ms. Gigantes: I want to ask a simple question. I have never understood the word "prejudice." What does "prejudice" mean?

Mr. McCann: I do not have a dictionary definition in front of me.

Ms. Gigantes: Is there a legal--

Hon. Mr. Scott: Disadvantage.

Ms. Gigantes: Disadvantage; prejudice.

Hon. Mr. Scott: Have you a choice?

Mr. McCann: No, I think--

Hon. Mr. Scott: Is the minister's definition all right?

Mr. McCann: The minister's definition is.

Mr. Chairman: Do you want to continue in this job?

Hon. Mr. Scott: I think it is sort of an offsetting negative advantage; therefore, I would say "disadvantage." Your position is prejudiced if it is reduced or modified or made less satisfactory than it was before the intervention of the act. Nonlawyers are not supposed to know what those words mean. Those words are for us.

Ms. Gigantes: It took long enough.

Hon. Mr. Scott: That is sections 15 and 16. Are there any other questions about intergovernmental exemptions?

Mr. McCann: Section 17 deals with certain types of information supplied to government by third parties. The original exemption was discretionary: "A head may refuse." The Attorney General has proposed an amendment to make it a mandatory exemption. There is also the addition of labour relations information. Clause 17(1)(b) was simplified grammatically somewhat but I do not think the meaning was changed. Subsection 17(3) is proposed to be added to allow disclosure with the consent of the third party. This would probably be the case in any event but a case was made by some of the groups that appeared before the committee that this should be made explicit to save argument later on.

Hon. Mr. Scott: What this section recognizes--again it is an exemption that is commonly found in freedom-of-information statutes--is that there are many groups of citizens, private or institutional, that are not obliged to provide information to government but who do provide information to government, either to their own advantage, or quite often, to the advantage of government.

An example of the first category is a trade union that in the course of a conciliation process before the Ministry of Labour may provide highly confidential information to the conciliator not only on the understanding that he will not tell the company it is bargaining with but also on the condition that he will not tell the public. That is information tendered on a confidential basis to the advantage of the citizen.

On the other hand, there may be information tendered on a confidential basis because government wants to get a sense of the marketplace by finding out how goods are priced, what component of a manufacturer's goods is the labour charge or what have you. That information cannot be compelled by government. You can ask for it, but you will not get it. Business or the institution says, "We will give it to you as long as you do not disclose it to our competitors or to the public." This exemption is designed to prevent this information from being disclosed when the confidential relationship is present.

Ms. Gigantes: On subsection 17(3), why is it that when the person who has given the information to the government agrees to its release, the head is not ordered to do so? Why does it not read "a head shall"?

Mr. McCann: I am not sure I have a very complete answer, except I think the implication is that where the consent of the person who supplied the information is obtained, the information will be released.

Hon. Mr. Scott: I suppose there is the possibility, perhaps not existing in every case, that it would contain personal information as well and then the personal information protections will hook in. General Motors volunteers some information to the government which it is not obliged to give, which is a component of information from its files and, accidentally, includes some information that is personal about people who work for GM. GM may consent to the release of that information. I think it is true that if it consented, it would ordinarily be released. In that sense, "shall" would be appropriate.

There might be some information that should not be released, even if GM consents, because an individual--

Ms. Gigantes: Then you would sever.

Hon. Mr. Scott: Then you would sever; you would release one part and not the other.

Ms. Gigantes: It should say "shall." You are going to have to sever something.

Hon. Mr. Scott: We have had the debate about "shall" and "may."

Mr. Martel: Is that not protected in other parts of the act on personal information?

Ms. Gigantes: Yes, it is.

Hon. Mr. Scott: It may be.

Mr. Martel: I went through this masterpiece yesterday and, as the Attorney General has just indicated, it seems that personal information relating to someone else should not be released. That is certainly covered in other parts of the act with respect to personal information. I am not sure why in this section, where somebody gives you permission, it is up to someone. There seem to be more roadblocks.

Hon. Mr. Scott: We have no problem with "shall." I am trying to explain why "may" is there, but it is no big deal.

Mr. Martel: It is like an obstacle course.

Hon. Mr. Scott: No, it is not an obstacle course at all.

Mr. Martel: It is.

Hon. Mr. Scott: You have to approach this in a more positive spirit.

Mr. Martel: I want to give the information if people ask for it. That is positive.

Mr. Chairman: I have never seen a more graceless winner, Martel. A holiday does you no good at all.

Mr. Martel: What holiday?

Hon. Mr. Scott: Section 18 is, again, a permissive exemption commonly found in freedom of information acts and designed to protect the economic interests of the province.

Ms. Gigantes: Could I have a description of what clause 18(1)(f) would mean? "Plans relating to the management of personnel or the administration of an institution that have have not yet been put into operation or made public." For example, would that have something to do with the notion of decentralizing the Ministry of Health out of Toronto or some matter of that nature?

Mr. McCann: It has to be read in connection with clause 13(2)(i), which is an exception to subsection 13(1). In so far as the change was to the program that affected members of the public, 13(2)(i) says you cannot refuse to disclose on the basis that it is advice or recommendations. I guess I should say my interpretation would be that 18(1)(f) would be limited to internal managerial personnel changes that related to the structure of the ministry but did not have an impact on program delivery that was contemplated by clause 13(2)(i), for example. It would be given a narrow interpretation to mean internal changes, if I can put it that way.

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Ms. Gigantes: What would be the purpose of this protection?

Mr. McCann: I think it is to give government an opportunity to devise, draft and create records relating to the management of personnel or the administration of an institution and maintain the confidentiality of those until they have been either put into operation or made public for planning purposes. There is a timing element there that, up to a certain point, the record is not subject to disclosure under the act. After the point at which it has been put into operation, for example, it would be disclosed.

Hon. Mr. Scott: The bill exempts certain cabinet decisions until they are effected; that is, brought into operation. This really is the administrative personnel characteristic of that. A personnel policy being developed will be disclosed only when it has been put into operation or otherwise made public. If you had a plan to move a ministry--I suppose your example might be assuming that was not a policy that went through cabinet--you

would not be obliged to release information about it until you decided to do it.

Ms. Gigantes: But we have just been told that the government would be obliged under clause 13(2)(i).

Hon. Mr. Scott: Yes, if it is a program.

Ms. Gigantes: This could be a final plan or a proposal to change a program.

Hon. Mr. Scott: Yes. That is right.

Mr. Sterling: This section 18 almost mirrors section 18 of Bill 80, save that under clause 18(1)(b) you have taken out scientific or technical information obtained through research by an employee and you have left that open--any information obtained by an employee. Why did you remove scientific and technical information from that section?

Mr. McCann: We recommended it at the request of the Ministry of Natural Resources. It turns out there are employees of government who do, for example, ethnological research, research which is not strictly scientific or technical, in which the same issue is raised. Somebody might be able, in effect, to get access to the research that a government employee had accumulated, publish it first and get priority of publication. We saw the issue as one of the fruits of research rather than particularly related to scientific and technical information.

Hon. Mr. Scott: Section 19 is a traditional, permissive exemption in favour of the solicitor-client privilege. The theory here is that in the event the government either commences litigation or is obliged to defend litigation, it should be able to count on the fullest accuracy and disclosure from its employees.

We know from experience in the private sector, and it is no less true in the public sector, that in order to do that there has to be an exemption in favour of solicitor-client privilege. You should not be obliged to say what you said to your lawyer or your lawyer probably will not get the whole story if it becomes known that he is going to have to go public with what you told him. That is the point of section 19.

Mr. Martel: What bothers me about this is that when you make inquiries--let us say it is a legislative group looking at something--you hide behind a multitude of sins by calling it "solicitor-client privilege." How do you sort it out? You are writing it so that a head "may refuse," and then you are going to try to sort it out without knowing all the information. We had it last summer in the Fontaine inquiry. People said, "There is solicitor-client privilege." You can hide a great variety of things because you cannot get at what is really factual.

Hon. Mr. Scott: In terms of machinery, I do not think there is going to be any problem or delay. What will happen here is that the head who, as you put it, wants to hide behind this will have to say what he is hiding behind and he will say he is hiding behind the solicitor-client privilege. "Hiding behind" is your phrase.

Mr. Martel: That is right.

Hon. Mr. Scott: There can then be an appeal to the commissioner, who will have the absolute right to determine whether that justification is warranted. The commissioner will be entitled to look at the information and to examine people who have participated in the collection of the record or the information. It will be for the commissioner to say: "This was not a solicitor-client case at all. No one was going to be sued. This information was not obtained for or was not necessary to the purposes of the lawyer. The head has not made out the defence or the exemption he has claimed. Therefore, the information will be released."

The good thing about the commissioner under this bill is that he has the right to remake all the factual and legal decisions the head has made. He does not have to be bound by what the minister has said at all. He can take evidence, look at the documents, go behind it and make the decision for himself.

Mr. O'Connor: I notice that in the amendments tabled today there is a proposed amendment by the government to section 19. In reading it, I am wondering how it is different from the current section 19 in that the added words seem to be a definition of what lawyers understand to be solicitor-client privilege. How does it add to those particular words?

Hon. Mr. Scott: Our view was that those words were not necessarily the definition of solicitor-client privilege.

Mr. O'Connor: That is what I am saying.

Hon. Mr. Scott: There would be two kinds of information: information given in the form of a record to the solicitor because it is in the files of the department as disclosed to him, and information, let us say, that is a memorandum prepared for his assistance. It was to encompass the last category that the words were added.

Mr. O'Connor: Does that last category of document not fall under solicitor-client privilege in any event?

Hon. Mr. Scott: It is pointed out to me that there is one other reason having to do with the particular position of crown counsel. The case can be made--I do not think it has been decided--that crown counsel, being a counsel who in a broad sense has no client in the traditional sense, never has a solicitor-client privilege. The crown attorney may not have the benefit of solicitor-client privilege the way the defence counsel may because the defence counsel has a client and the crown counsel, serving the public interest, perhaps does not. Those words are added to make sure that the work product of the crown counsel is protected as you would expect.

Ms. Gigantes: Could we not read that one in connection with subsection 50(1a), which reads, "Where the commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the commissioner shall not order the head to disclose the record or part"?

Hon. Mr. Scott: Yes.

Ms. Gigantes: When I read subsection 50(1a) in connection with section 19, subsection 50(1a) is saying to the commissioner, "What you look into is whether the head can disclose the record." If the head has the right to refuse to disclose the record--

Hon. Mr. Scott: No. The appeal to the commissioner under section 19 would be on this record. The head would say, "I refuse to disclose this, because it is part of the solicitor-client privilege." The issue for the commissioner is, is this document protected by solicitor-client privilege? If the answer to that is yes, then the head may properly refuse to disclose it. If the answer is no, he may not properly refuse to disclose it on that ground. He may have some other ground, but he may not on that ground.

Subsection 50(1a) says, "Where the commissioner upholds a decision that the head may refuse to disclose a record...the commissioner shall not order the head to disclose the record." In other words, if the decision is that this is not solicitor-client, then the commissioner may order, in effect, its disclosure.

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Ms. Gigantes: Yes, but that means anything that is solicitor-client is dead in the water as far as the commissioner is concerned.

Hon. Mr. Scott: No, the commissioner may have--

Ms. Gigantes: The way you just explained it makes it that way.

Hon. Mr. Scott: I disagree with you. The commissioner is going to have full power to decide on his own whether it is within the solicitor-client privilege or not. If he decides it is not, then he will order it disclosed.

Ms. Gigantes: But if he decides it is--

Hon. Mr. Scott: Then he may not say, "None the less, you should have disclosed it."

Ms. Gigantes: Precisely.

Hon. Mr. Scott: It is solicitor-client privilege.

Ms. Gigantes: The door is closed. Once it is called solicitor-client, what they are telling us is that the door is closed.

Hon. Mr. Scott: No. Once it is found to be solicitor-client by the commissioner, then it will be up to the head whether it will be disclosed or not.

Ms. Gigantes: Right, and there is no public interest test on that at all.

Hon. Mr. Scott: That is what the exemption is for. Once it is found to be law enforcement, there is no public test either. Once it is found to be a company secret, there is no public interest test.

Ms. Gigantes: We will debate that later.

Mr. Sterling: What if the commissioner finds that in fact one eighth of the record deals with legal advice and seven eighths deals with matters other than legal advice?

Hon. Mr. Scott: He can sever it.

Mr. Sterling: He can sever it at that point?

Hon. Mr. Scott: Yes. So can the head, by the way, and presumably when he gets used to the act, he will; but if he does not sever, the commissioner can.

Mr. Sterling: Who owns the record? As I understand the way government functions, the Attorney General basically owns or has control of the document that is the legal opinion. Who is the head we are talking about in section 19?

Hon. Mr. Scott: As you will know, head is defined, and the applicant makes his request to a head. That head--

Mr. Chairman: This is not the naval definition of the term?

Hon. Mr. Scott: Let us assume I am doing an opinion for the Ministry of Natural Resources. The documentation will be partly Ministry of Natural Resources record and partly, as you correctly point out, the opinion that we have prepared, which is our record. Under the scheme of the act, when an application is made to either of those agencies, one of them in effect decides which the principal ministry is. In the case you give, it occurs to me we would say: "It is up to the Ministry of Natural Resources. They can be the head for these purposes. It is mostly their record."

Mr. Sterling: Normally, a legal opinion would reside in the office of the legal director of the Ministry of Natural Resources.

Hon. Mr. Scott: It used to; we changed that.

Mr. Sterling: Is the legal director of the Ministry of Natural Resources not in fact your employee; the Attorney General's employee?

Hon. Mr. Scott: Yes.

Mr. Sterling: Therefore, the head, the fellow who has the document, really is the Attorney General in all circumstances.

Hon. Mr. Scott: The ownership of the document is irrelevant for the purposes of freedom-of-information inquiry. What is relevant is for the various heads who might be thought to have some interest in the disclosure to decide among themselves which will be the head for the purposes of the record. There is a provision in section 50 that permits the head who receives it to transfer it to another head on the assumption that head is more directly interested.

If we did an opinion for Natural Resources and someone came to us and said, "We want release of the opinion and the Natural Resources file," I would probably say, under section 50: "I am going to let the Minister of Natural Resources deal with that. I do not care whether our opinion goes out or not."

Mr. Sterling: But you still have control over the opinion.

Hon. Mr. Scott: There is no issue of control or ownership under this statute. It does not matter who owns it. What matters alone is that the application comes in to a minister and then the ministers or agency heads decide among themselves who will respond to the request. They decide not on an ownership basis, it seems to me, but on the basis of who is the dominant

institution. You are going to have lots of files in which there are four, five or six ministries who, in your sense, might be said to own a piece of it.

Mr. Sterling: The dominant institution in each case will be your ministry, will it not? Every time there is a request made for a legal opinion it is going to end up in the Attorney General's lap.

Hon. Mr. Scott: No.

Mr. Sterling: The Attorney General may have quite significant differences and interests in divulging the total of that document.

Hon. Mr. Scott: Let us take a file having to do with the purchase of services for some courtroom in southern Ontario. That will be a file, if there is a legal opinion, that will involve not only the Attorney General's ministry but also the Ministry of Government Services and perhaps some other ministries.

Under subsection 25(3), the request is made to some minister for the release of that file. Subsection 25(3) says for the purposes of this section, "another institution has a greater interest in a record than the institution that receives the request for access, if...." So the ministries that have an interest in the record decide, under that section, which has the greater interest in it. That ministry, that head, is the one that responds. Whether there is a greater interest or not is governed by subsection 3. It is not governed by any rules about ownership of the documents.

Section 20 is again a permissive exemption that relates to an expectation that release would seriously threaten the safety or health of an individual. Again, I emphasize here that there is an appeal to the commissioner, who will consider whether that judgement is right or wrong. If it is wrong, he can direct the release of the information.

Ms. Gigantes: Would the commissioner look at what would reasonably be expected to?

Hon. Mr. Scott: Certainly. The commissioner, as I understand it, will decide what would reasonably be expected to.

Ms. Gigantes: Very good.

Hon. Mr. Scott: Section 21, a major section, is the personal privacy section.

Mr. McCann: Section 21 is one of the keystone provisions of the legislation. It attempts to balance the issue of access to information against the right of personal privacy of the individuals who may be the subject of that information. It is taken fairly directly from the Williams commission report.

The basic principles are that there are certain cases where, notwithstanding that personal information is contained in a record, it must be disclosed. There are other cases, however, where the issue is whether there is an unjustified invasion of the personal privacy of an individual. The section calls for a judgement to be made by the head of the institution in the first instance. That decision is structured by subsections 2, 3 and 4.

Subsection 2 sets out the criteria that the head is to take into consideration in deciding whether there is an unjustified invasion of personal

privacy. It is really a list of criteria, some of which might militate in favour of privacy and some of which would militate in favour of access. It is really rather open-ended in that sense.

Subsection 3, however, states a number of cases that are presumed to be an invasion of personal privacy, so the first question has been answered; that is, there is a presumption that personal privacy has been invaded. Subsection 4 is an exception to subsection 3, saying there are certain things that are not deemed to be an unjustified invasion of personal privacy.

The sum total is, really, that a judgement has to be made by the head, taking into consideration all relevant circumstances, in determining whether there is an unjustified invasion of personal privacy. It is not going to be an easy decision, but this is the way the act tries to balance the right of access and the right of privacy.

Hon. Mr. Scott: Again, just to make the point, the commissioner will have the right to remake that decision without restriction. In other words, he will be able to make precisely the judgement on whether the criteria of the act have been met that the head himself had to make.

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Mr. Martel: I may be misreading this, but it worries me. A number of years ago, I was involved with a group that looked into the hiring practices of the universities of Ontario. You will be interested to know that one of the leading lights who refused to give information to that select committee was none other than Carlton Williams. We were trying to get at the old buddy network as it prevailed in the early 1970s and as I am told it is coming back now.

Hon. Mr. Scott: You are part of the network. You must have known all about it.

Mr. Martel: I knew something about it, but not enough. The point I am trying to make is that trying to get the information was impossible, and the person leading the attack against giving us the information was none other than Carlton Williams.

Hon. Mr. Scott: He is much reformed now.

Mr. Martel: Is he? He has seen the light somewhere, has he? I look at, for example, clause 21(1)(a)--

Hon. Mr. Scott: One cannot listen to you for ever without being changed. Our views change.

Mr. Martel: I worry about it. What it says here is, "upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access." Are we shutting the door again by saying that is certain personal information which the head may refuse to give and it all has to end up on the commissioner's desk? We seem to be heading back in the same direction of obstruction that was led from 1971 to 1975 when we tried very desperately to find out what the practices were going on in universities.

Hon. Mr. Scott: I suppose one of the questions is how you value personal information, and I must frankly say--

Mr. Martel: Personal stuff.

Hon. Mr. Scott: That is what section 21 is about. It is about personal stuff, the way you put it. My bias is that personal stuff should not be released, and subsection 21(1) says one of the conditions under which it may be released is when the person about whom the personal stuff is written consents.

Mr. Martel: Just hang on. The personal stuff I am talking about is one's bank account, one's personal life. I am not interested in that, but when I am making an inquiry, as the select committee was, into what the practices of a university are and the university refuses to give the information, that personal stuff of a person's identity is a lot of hokum. What we were trying to do was knock down the old buddy network that existed in most universities at that time.

Hon. Mr. Scott: I think the answer to your precise problem is that the information you were probably seeking to get from the university was not personal information at all. In other words, the information you wanted could be just as useful without any names at all.

Mr. Martel: That is right.

Hon. Mr. Scott: Now, if I am right about that, that it was not personal information, then section 21 has no bearing at all.

Mr. Martel: But that is where they hid. They hid behind it being personal information and therefore they did not have to give that personal information. All I am trying to make sure is that does not occur again, where they hide behind a smokescreen.

Hon. Mr. Scott: I think the reality is that you begin with the assumption that if decisions are left in the hands of the head, the head who will be quite often a politician, quite often a bureaucrat, may be anxious to prevent the disclosure of information. That is why, as an antidote to that possibility, which would never occur under our administration but which might occur under other governments, there would be this constraint about disclosure of information.

That is why the role of the commissioner is fundamental and why it is so critical that he should be entitled to make, factually, the very decision. For example, under section 21 he will, as I have said, make those decisions again, and he will be able to make them with all the advantages and disadvantages--all the advantages, I suppose--that the head has. He will see all the documents, without exception. He will interview people; he can take evidence; he can do whatever he wants, in terms of acquiring information permitting him to make that decision again. Then, if he decides it is not personal information, that is that.

Of course, when we come to an appeal to the court, about which more will be said, one of the things we know is that appeals to the court are taken in the federal system, interestingly enough, exclusively by people who want to prevent the release of information.

Ms. Gigantes: No, that is not true.

Hon. Mr. Scott: Yes, of the 11 federal cases, as I understand it, every one of them has been funded and advanced by someone who wants to prevent the release of information.

Ms. Gigantes: No, that is not true at all.

Hon. Mr. Scott: Then I am mistaken.

Ms. Gigantes: I know two people who have gone for--

Hon. Mr. Scott: Then I am mistaken. I am sorry; I have different facts. That is beside the point and we will be coming to that.

Ms. Gigantes: Just because of my previously stated concern about subsection 50(1a) and how that will be applied, I take it from what the minister is telling us that he would have no objection to having an extra section related specifically to section 21 which says the commissioner can review the facts of the matter or something to that effect.

Hon. Mr. Scott: I think if you put that in only with respect to section 21, then its absence with respect to all the other sections would cause real difficulty.

Ms. Gigantes: Oh, we will put it in everywhere else too.

Hon. Mr. Scott: There is no question that our intention--and we believe legislative counsel will confirm that the language reflects our desire--is that the commissioner should be entitled to refind the facts and draw the conclusions upon which any exemption or any disclosure is based.

Ms. Gigantes: Good. So you will be amenable to amendments which make that so clear that no head or any co-ordinator of access to information in the ministry is ever going to make a mistake.

Hon. Mr. Scott: If those amendments can be made without damaging the statute. One of the problems is that if you make an amendment for one section only, when the case goes to court, they say, "You did not make the amendment for the next section and therefore it does not apply."

Ms. Gigantes: We will try to fit it in anywhere and I am sure you will draw any exceptions to our attention.

Mr. Martel: That commissioner is going to work 32 hours a day, eight days a week, with all the things that are going to be before him.

Hon. Mr. Scott: He is going to have some help.

Mr. Martel: Is he?

Hon. Mr. Scott: Are we taking nominations?

Section 22 is sort of a de minimus section which is simply designed to prevent the access-to-information process getting under way, with all the appeals it involves, in a case where the information is going to be made public. It is really just to remove the application of the act when a document is about to be made public, as it would be removed if the document were public.

Access procedure, section 24, provides for a request in writing, and our amendments tabled today--I do not think they are amendments to section 24--deal with who may make that request. For example, with respect to a person under 16 years old, the request has to be made by the person who has lawful custody of that person. With respect to an incompetent person, the trustee has

to make the request. With respect to a deceased person, the interest of the deceased person is represented by his personal representative.

Mr. McCann: The amendment to which the Attorney General is referring is not an amendment to section 24. It is, in fact, a new section, 59b, which is proposed to come towards the end of the bill. It is the last one of the pile of government motions.

Hon. Mr. Scott: I think a useful--I hope, a useful--part of section 24, subsection 2, places squarely on the institution the obligation of describing the defect in the application, if any. In other words, instead of having a situation where laypersons make applications and then, weeks later, hear, "Your application was defective, so we did not deal with it," in this case, if the institution is going to take the position that the application is not precise or does not have enough information, it will be the institution's obligation to point that out to the applicant so he can remedy it and not allow the thing simply to sit there.

Section 25, to which I referred earlier, deals with a request for a record and imposes on the institution receiving the request the obligation of shuffling the request to the appropriate institution.

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Mr. McCann: There is one point I would like to make about that. From the requester's point of view, it is enough to establish that an institution has custody of the record. The words that are used are "custody or control." If an institution has custody, it is going to have to respond to that request. If there is another institution which has a greater interest, the request can be transferred to that institution, but the time started running when the first institution received it and continues running. The fact that it is transferred does not start time running afresh or create a delay in the required response to the request.

Hon. Mr. Scott: The point is that if you tender your request to the Minister of Natural Resources and he does not have the document--he may not know anything about the document--it is his obligation to run down the document for the purposes of transferring the request to the institution that has it, and the time runs in the meantime. Government does not get any time advantage by shuffling the documents around.

Ms. Gigantes: Except that under section 27 you can get extension time.

Hon. Mr. Scott: You can get one extension, but you do not get precisely any time advantage by saying: "It came to us. It should have come to somebody else; so do not count the time running until it actually gets into his hands."

Ms. Gigantes: With respect to all this business of counting the time running, if you look at section 27, it really does not mean anything anyhow, because you have an unlimited ability to extend the time.

Hon. Mr. Scott: Nothing I do pleases you.

Ms. Gigantes: That is not true.

Mr. McCann: It is not unlimited. It is subject to the review of the commissioner. If the commissioner says it is an unreasonable extension of

time, that is it for the institution. It will have to respond within the time set by the commissioner.

Ms. Gigantes: Yes, but how long will it take for the poor soul to get a review by the commissioner? You can certainly call on a fair amount of elbow room there.

Mr. Martel: I remind my friend, who just said to my colleague that nothing ever pleases her, that there are questions that have been sitting on the Orders and Notices paper for 11 months.

Hon. Mr. Scott: Nothing ever pleases you either. In fact, the pair of you sitting there are a recipe for displeasure.

Mr. Martel: That is too bad.

Ms. Gigantes: You are so amiable.

Mr. Martel: What vacation did you have? Or do you need one?

Ms. Gigantes: Let us go.

Mr. Martel: What is 11 months?

Hon. Mr. Scott: Where were we? Section 26.

Mr. McCann: Section 26 is important because it is the one that sets out the basic time limit. Within 30 days after the request is received, the head of the institution has to give notice as to whether access will be given and, if access is to be given, make arrangements to give it. The basic 30-day period flows out of section 26.

As we have already mentioned, section 27 is the extension of time for certain reasons.

Mr. Martel: Have you considered the number of days in that extension of time, rather than just leaving it to run open-ended?

Hon. Mr. Scott: It does not really run open-ended, because any extension of time can be reviewed by the commissioner. If he thinks it is too low or too high, he can say so. It is not open-ended; it is reviewable.

It seems to me we are going to have, at the extremes, at the margins, two kinds of information requested. One will be information in support of an application for your driver's licence made last week. I presume you can dig that up fairly quickly. The next piece of information from a scholar like you will be all cabinet submissions made to the Oliver Mowat government in 1921. First of all, we have to find out where that is.

Mr. Martel: The archives.

Hon. Mr. Scott: It may be that the nature of the document requested is going to dictate, to a very large extent, the time required to find it. You might write in asking for copies of all letters your grandfather wrote to the Premier in 1919. We can probably find that for you. I am not sure we can find it as quickly as the application for your driver's licence.

Mr. Martel: I apologize. I will not ask another question. I simply asked you if you have considered a time mark.

Mr. Chairman: Martel says, "I won't ask another question."

Mr. Martel: Heaven help me.

Hon. Mr. Scott: That is why we believe in flexibility there, but the commissioner has the right to review it. If time limits get out of hand, he will say so.

Ms. Gigantes: Or she.

Hon. Mr. Scott: Or she.

Mr. Sterling: One of the problems, of course, is the relevancy of any material that you seek, and if you allow it to go, the experience in the federal system has been that some requests have gone for periods of 12 or 18 months. Under Bill 80, there was a maximum of 90 days; you had to produce or not produce.

Hon. Mr. Scott: This government has been in existence for 117 years and much of the material created over that period is available. I must tell you frankly that one's ability to lay one's hands on a precise document will require people to go through files page by page looking for the document, depending on how historic it is. That can be done. There are cost implications of it. It can be done, but it will take time.

What you confront is the reality that much information, current information, can be produced in a matter of days. Much information cannot and might take weeks or months to find. Confronted by that, what do you want to do? Pick seven days or 60 days?

It seems to me it is better to set the time for responding and to permit one reviewable extension of time to be given subject to the commissioner's examination. It is a judgement call.

Ms. Gigantes: When you first brought in the bill, you thought, in clause 28(4)(c), certain things could be done in 20 days. Now you figure they are going to take 30 days.

Hon. Mr. Scott: Probably 40 is right, but we will stick with 30.

Mr. McCann: We had a problem there because subsection 28(4) in the original bill appeared to clash with the general appeal period that is set out in subsection 46(2), which is 30 days. That was chosen as the time within which an appeal had to be made, and some references had to be changed to reflect that.

Ms. Gigantes: They do not have to be coincident at all. There is nothing that joins those two motions. Anyhow, let us not debate it.

Hon. Mr. Scott : Where were we here? Have we responded to that inquiry?

Ms. Gigantes: Yes.

Hon. Mr. Scott: I think so. What section are we on--28?

Mr. McCann: Section 28, I believe.

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Hon. Mr. Scott: As you will see, section 28 has some time limits; notice that has to be given; contents of notice. These are all adjectival sections; not very glamorous.

Section 29 is contents of the refusal notice, and there are some matters of interest here. Under section 29, the head has to set out the grounds on which the refusal is made, and not the least important ground is that there is no such record, because that will want to be adjudicated as well in many cases. There may be a dispute as to whether there is a record. Where there is a record, the head has to set out the specific provision of the act under which the access is refused and the reason the provision applies to the record, then to the person who made the decision and then to the appeal provision to the commissioner.

That is critical because the head is going to be caught with the section and grounds he gives for refusal. If he says, "Solicitor-client privilege, section 16," he then has to set out why it is solicitor-client privilege: that litigation was begun on a certain day and blah, blah, blah. Then that all comes before the commissioner and the head is caught by that record, in the sense that that is his reason for exemption. The commissioner then determines whether he agrees with it. If he does not agree with it, the document is released.

Ms. Gigantes: If he agrees with the head's determination that it is a record to which the privilege of solicitor-client applies--

Hon. Mr. Scott: No, the question is not whether he agrees with the head's determination, because that connotes some kind of deference to the head. If the commissioner, after making his own inquiry, himself believes that it is a document created in a solicitor-client relationship, regardless of what the head says, then he says so. If he says so, it is exempt from disclosure under the act.

Ms. Gigantes: And subject to no public interest test.

Hon. Mr. Scott: It is subject to the test of the statute. The test of the statute is that the public interest favours an exemption for documents subject to solicitor-client privilege. The public interest test is the exemption provisions of the statute.

Ms. Gigantes: I see.

Hon. Mr. Scott: I would not want a commissioner deciding these questions by a public interest test that was not in legislation that he could formulate himself, because then if the government of the day appointed a commissioner who was one of its own, the so-called public interest test--which, I want to remind you, would probably not be reviewable in a court even under an appeal--would be the commissioner's own personal view. I would be afraid that the commissioner's own personal view would not reflect statutory concerns.

Mr. Martel: This is a new section. I cannot understand why it would come about that the head refuses to confirm or deny. Is that because he does not know or that he simply chooses not to answer either way, "Yes, we have a document," or "No, we do not have a document"?

Mr. McCann: In the section 14 case, which is law enforcement, it is because there is a feeling that in some cases, even confirmation of the fact that a file was in existence would interfere with an ongoing investigation. In the case of the unjustified invasion of personal privacy, it is a concern that knowing that there was a dossier about somebody, even if you did not know the contents, could in itself be an invasion of personal privacy.

Hon. Mr. Scott: If you applied under the venereal diseases act for a file in the name of X, the information, "There is such a file but we cannot disclose it to you," would tell you all you needed to know. If you applied in law enforcement to have any statements made by notorious stool pigeon Jones in the case of Regina versus So-and-So, which is going to trial next month, the disclosure, "We have those statements, but they are not releaseable under section 14," tells you all you need to know.

Now where are we?

Mr. McCann: Section 30.

Hon. Mr. Scott: Would you like to tell us about that?

Mr. McCann: Section 30 creates a basic rule that a person shall be given a copy of a record when he is given access, unless it is not reasonably practicable, but it goes on to say that the person may request an opportunity to examine the record itself and, where it is reasonably practicable, the head shall allow the person to examine the record in accordance with the regulations.

Ms. Gigantes: Can I ask why, in this version of the bill, the old section 33 was dropped? It seemed very nice. It would allow the person who was looking at the record to have copies made or to make copies.

Mr. McCann: We changed this--

Ms. Gigantes: I remember the days when you used to have to go to the Workers' Compensation Board and write down everything that you wanted to learn from a file to which you had been given authority to get access.

Mr. Martel: Yes, they would not even make a copy.

Mr. McCann: The original motivation to change the section was that a criticism was made of the original section 30, that subsection 2 of the original was unclear because it seemed to give--

Ms. Gigantes: I agree with that.

Mr. McCann: Now if we have lost something here--

Ms. Gigantes: You lost something nice.

Mr. McCann: --I do not see any reason we could not look at putting it back. I think we can undertake to look at that.

Hon. Mr. Scott: Sure, if we have lost anything you value, we will certainly look at putting it back. Section 31?

Mr. McCann: Yes, this is information on institutions. It is proposed to give this duty to the responsible minister rather than the Lieutenant Governor in Council.

I think the more important section is 32 which, in the original, suggested that every head--in other words, every institution--had to make available for inspection and copying a description of its organization, a general list of the types of records, the title and business address of the head and so forth. That would mean some 160 or 170 separate lists. The suggestion that has been made in the Attorney General's amendment is that there should be one directory to be published by the responsible minister which would contain all this information.

Ms. Gigantes: Is the responsible minister the Attorney General?

Hon. Mr. Scott: No.

Mr. McCann: The responsible minister has yet to be chosen. The responsible minister is a member of cabinet to whom responsibility is assigned. This has been beefed up somewhat by section 34b, at the bottom of page 24, which requires every head to provide to the responsible minister the information needed to compile the directory.

I think this will be a much more useful directory to members of the public because, if it is properly indexed, it will be possible to find records, even where the person has only the vaguest idea which institution might have them, whereas, if it is left to each institution, it would be quite difficult, I think, for a requester to determine--

Hon. Mr. Scott: It is really in government's interest as well, because we do not want the document application coming to the wrong ministry. It is just going to create a shuffle, so the index and the record are hopefully going to be helpful from our point of view and from the consumer's point of view in telling him where to apply.

Mr. Chairman: Can I ask a question here that I am sure we are going to have to deal with sooner or later? This is a very confusing piece of legislation. To expect that my constituents will be able to use this index is crazed; it is a crazed, wrongful notion.

The only hope I could see is that they may have the financial resources to hire a good lawyer, who will be trained in using such indexes, to make an application under the Freedom of Information and Protection of Privacy Act or that they may have a son who is taking post-graduate work somewhere or a daughter who is really good at this kind of stuff and could do it.

For all intents and purposes, my reading of this act tells me it is a totally useless document for members of the public at large and that they will need some help to interpret it.

Hon. Mr. Scott: Mr. Chairman, let me make this observation. There are some laws that, by nature, are complex. The customs law, which is a law to which every Ontario citizen submits every time he crosses the boarder, is one of the most difficult and complex laws on the statute books, not because there is someone in Ottawa who wants to make the customs law unpleasant and difficult to read, but because, by its nature, it is a difficult and complex business.

This freedom-of-information law has that characteristic, and that is why it seems to me sections 31, 32 and 33 are so important, because what they contemplate is a manual and an index. No person, unless he is abused by a terminal disease of irrationality, is going to consult the statute to find out

his rights. He is going to consult a manual with an adjoining index that will be available in every government office. It will tell and show people how to apply, where to make their applications and how to look up their documents in the index.

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It will do exactly what the customs form does that you fill in on the airplane when you are coming back from New York. It will focus your attention on the four, five or six key issues that are important to you. One of the key issues is: Are you bringing into Ontario any plant material? You would never find that in the Customs Act and regulations if you spent six days looking for it, but it is there, and the form focuses your attention on that critical question and six others.

This manual and this index will do for freedom of information what those forms do for the Customs Act, which you and I could not get through if our lives depended on it, which happily they do not.

Mr. Chairman: My problem is that I know what is going to happen. I know who they are going to call when they are handed a manual. I do not relish this task at all.

Hon. Mr. Scott: Then they will call the Ombudsman.

Mr. Chairman: God forbid. I still have my ears ringing over the last engagement there.

Mr. Martel: About seven years ago, we thought it was going to be a relatively simple matter to put into the telephone directory the Board of Internal Economy, the various government agencies and ministries--never mind the agencies, just the various ministries. We have suffered through seven years of trying to get that improved because people cannot even pick up the telephone book, go to the blue pages and find the ministry they want to call. It is most confusing to the general public.

I wish I could be as assured as the minister is that this is going to be done and that it is going to be done in a way that makes it simple. In seven years, the problem of the phone book has not been resolved to where people can yet find the ministry they want to call. I think it is very difficult.

Hon. Mr. Scott: I think you are right, but the reality is that we are now at a stage of life's complexity where legislation on complex matters is not going to be simple. Pay equity legislation is not simple. It is complex. There are all kinds of issues to be canvassed, nailed down, spelled out and precisely defined. This information act is like that. To say it can be simple is to say you believe in the yellow brick road and the Wizard of Oz. It just ain't going to happen in the 20th century.

What you do when you have a complex piece of legislation is you try to create manuals that are designed to focus the reader's attention and set out a series of courses that will commonly apply to most cases. Then you have people who give advice. You have ministry people who will have to help people find their way through this. Failing that, you have MPPs for the hard cases. Failing that, when the MPPs let you down, you have the Ombudsman who will take someone through it. That is what we do with all our legislation.

The Family Law Act is not simple. It could not be understood by someone reading it without training.

Mr. Chairman: That is not the problem. None of us would argue that it is simple legislation. What I am trying to point out is that the access for the public at large must be a short, simple step. As with the customs form, nobody hands them the act. What they hand them is two pages, and if you check five boxes and sign your name at the bottom you have accessed the system. I contend that if this is to be of any use to the general public at large, the manuals are very useful to people who are skilled in using manuals and identifying where records are, that is fine, but that is irrelevant as far as the public is concerned. What the public needs is ready access to the system so if you simply devise a form that says, "I want to know this," and it goes to this phone number or to this address, then that person takes the manual and finds it. That is fine. You have solved the problem.

Hon. Mr. Scott: We are in the course of doing that. There will be forms that applicants will be given in which they will set out their name and address and the kind of information they want. The forms will then access the system for them. The creation of forms is itself--

Mr. Chairman: An art.

Hon. Mr. Scott: An art. But certainly there is going to be that. We are not going to say to one of our citizens who wants a piece of information, "Here is the act; see you later." We are going to have forms, appropriate indexes, offices and staff to help them. We could not run this system without it. We did not go to the whole trouble of drafting up this act to design a system that would prevent anybody getting any information.

Mr. Chairman: The thought never crossed my mind.

Hon. Mr. Scott: Like those who went before us, our instinct in doing it in Ontario was the thought that there should be maximum disclosure in the easiest possible way. The forms are going to be critical. The information program in support of the act is going to be critical. The staffing of offices at localities to assist people is going to be critical.

Mr. Chairman: I think in general that the problem we are all having with this is looking at the legislative side of it. I do not know how the hell you will get any information out of anybody. There is going to have to be a substantial acknowledgement that the purpose of the exercise is not to sort out all the fine points of when you cannot give out information, but to look at the more practical ramifications of how the hell you find out anything. That is what is troubling me as we go through this exercise. I understand the complexity of it and the reason it has to be complex, but I think that somewhere in the shuffle we have lost the original goal.

Hon. Mr. Scott: The other thing worth observing is that the message to the consumer is in the name of the act and in the forms. Most of this act is a message of constraint to two people, first the head. We have spelled out for the head right here--and he is going to have to read and understand it; no forms will help him--the limited number of exemptions and have said: "There are no others, buddy. If you cannot bring it within one of those categories, out it goes." The number one message here is to the head of the institution.

The number two message is to the commissioner, because we did not believe as a Legislature that we should say to the commissioner in terms of overriding discretion, "Do whatever you want about these cases that come up to you." We thought we should say to the commissioner: "These are the issues about which you must make factual judgements. This is our message to you. We want you to decide that kind of question."

In a real sense, the act is written to those who will be fighting to prevent the release of information. We are saying to them: "Look, that is all you have going for you. Everything else comes out."

Mr. Chairman: I will stay out of the argument.

Mr. Sterling: Reluctantly, I have to agree with the Attorney General. We need something in here because of the nature of the legislation. Notwithstanding the problems an individual might have, I assume that in most cases an individual using this act for the first time will probably have a pretty good idea of the document he is after, whereas someone who perhaps is doing research, etc., will be able to take the time to become familiar with whatever indexes are available.

I guess the Freedom of Information and Protection of Privacy Act does two things. First, it provides access to the public to get access to government records. But it also puts into line the government's practice of keeping records. That was the real initiative for the freedom of information act to ever come into existence in the world. I think Sweden was the first. Their first act was called the Secrecy Act. It had nothing to do with freedom of information; what it had to do with was confidentiality of written records. That is where this whole freedom of information emanates out of. What you are seeing in terms of catalogues and government practices is a reflection of where that legislation and original impetus for it came out of.

I just wonder why you physically placed in the act the publication requirements where they are. I would have thought maybe they should been placed up front where somebody would find them earlier in the act prior to the exemption section.

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Hon. Mr. Scott: I think the answer is there is no reason. There is no reason section 50 cannot be moved up to the front, except that the normal way of drafting legislation is to deal with rights and benefits first and then to deal with machinery to enforce those rights and benefits. That is the way we have followed. That is the way most statutes in Ontario and in Canada have been drafted, but there is no reason the sections cannot be moved around if you please.

The point I am conscious to make--it is repetitive and I will not make it again--is that the sense that someone seeking a piece of information is going to work his way through this act is not realistic. That is not the way you are going to get access to information. There are going to be forms and indexes. It is no more likely that someone seeking information will page through this act one page after the other than it is that you coming into the country will read through the customs and excise acts to see what you can bring in. Your attention will be directed by proper government information to what you need to know for the purposes of what you want to do. We are very conscious of trying to do that right and in a fair way. I have no doubt that the members of the Legislature will encourage us in that.

Mr. Sterling: I would have preferred a much shorter section in this particular area, which may not be as technically complete as what you have provided here but which would be much more readable by the general public. I think what you have done in drafting this has made it unnecessarily difficult by trying to be too specific as to the information a head must or must not cover.

Hon. Mr. Scott: The purpose of that is that is not a message to a member of the general public; that is a message to the head. You will bear in mind that we are dealing with 165 institutions, some of which are quite remote from a minister's or Premier's control in the sense that they are crown corporations and so on.

The purpose of that section is not really to tell the consumer anything. That is to tell the head of the Workers' Compensation Board that, whether he wants to or not, he has to do the following things: to tell the head of some other crown corporation that he must organize his information and catalogue it in a certain way. He cannot say to us: "Look. Get off my case. This is not my Freedom of Information Act. You and government can do what you please." We are imposing on him or her the obligation of meeting the standards of this legislation.

Mr. Sterling: While that may be true where the sections are directed, the act itself should be a cross between having a technically perfect document and something that is readable by the public. That is one of the biggest problems I have with the language of Bill 34. That is enough said for now.

Mr. Chairman: Anybody else?

Hon. Mr. Scott: Where were we?

Mr. McCann: I think we were talking about section 32.

Hon. Mr. Scott: Yes. Section 33.

Mr. McCann: Section 33 requires certain kinds of documents that describe the ways in which statutory provisions are administered, manuals, directives, guidelines, etc., to be made available in reading rooms, libraries and offices of institutions. I would like to draw the committee's attention to the fact that clause 13(2)(1), which again is an exception to the advice and recommendations exemption, says that access cannot be refused where a record contains "the reasons for a final decision, order or ruling...made during...the exercise of discretionary power conferred by" a statute.

I think if you put those two together, the manuals, directives and the kind of general policy statements under which people are operating must be in the reading room. The particular decisions cannot be refused under section 13.

Mr. Martel: Not having been involved, can I ask what might appear to be a very silly question? Would it not be better if we had a central clearinghouse for all this? In other words, rather than asking the individuals to sort it all out and look for it themselves, would it not be better if it all came to a ministry--the Ministry of the Attorney General, for example--which then would send it out to the head of the appropriate place?

I go back to the telephone book. We have not been able to sort it out in seven or eight years, and we have tried. Had the whole thing cleared so that it came to the Attorney General, who had a staff, and then been sent out to the head of the appropriate institution for the information, rather than being bogged down all along the way--

Hon. Mr. Scott: We know that a number of requests will come instinctively to some ministries rather than others. I get all the mail that should go to the Ministry of the Solicitor General, just in the nature of the

exercise. People write me all about coroners, and I ship the mail over there. My obligation under the freedom of information act will remain exactly the same. If I get a request for a coroner's report, I cannot say: "Sorry, wrong ministry; return to go." Under the section of the act we have already read, I am obliged to direct it to the appropriate minister for decision. That will continue.

On the other hand, when you are dealing with 165 institutions, there is no doubt that if it all comes to me, there will be delays that will not occur if we can allow people to look at an index. If they want census information, they look under "C" and find that is in the Ministry of Municipal Affairs. If they then direct their letters to the Minister of Municipal Affairs, they are going to get it faster than if they send it to me and I send it to Municipal Affairs.

It can be done both ways. For example, we know a large number of these requests will come to the Lieutenant Governor, just because that is the way people write. He is going to get a lot of requests for information from his government.

Mr. Martel: Why not simplify it so that none of that occurs and, if you do not want the job, it goes to some agency or somebody who is appointed specifically to do that, rather than go through all the shenanigans?

Hon. Mr. Scott: You see, it does not simplify it. The essence of your position always is that you simplify something by creating a brand-new bureaucracy to deal with it. Off you go, and you have simplified it. Our experience is that you do not always simplify things that way.

Mr. Martel: You have just given me a list of examples that are going to go to the Attorney General and some that are going to end up with the Lieutenant Governor. It is going to be all over the ball park. I am suggesting you might take a group that works there already and have it act as a clearinghouse, so you would not have to try to prepare something. Quite frankly, I do not know how it is going to work, because we have not clarified a telephone book in seven years.

At noon, when you have nothing to do over your lunch, I suggest you get the telephone directory and see whether you can make head or tail of it. You will not be able to do so. You might want to lend the Ministry of Government Services this staff of yours that is preparing all this material and has worked it out. You might be able to give Government Services some advice, because it has not come up with the solution to the telephone book. You might be able to do it much better.

Hon. Mr. Scott: You are quite right; we could create a ministry of information. Frankly, my experience over 25 years does not lead me to look upon you or your party as efficiency experts. The best advice we are getting at the moment is that we can handle this within the existing bureaucracy, without setting up a new bureaucracy. We would no sooner have the bureaucracy set up than you would say you wanted it moved to Sudbury, and everybody who wanted a piece of information would have to move it through Sudbury.

Mr. Martel: Your 25 years' experience; some of us are new boys on the block--

Hon. Mr. Scott: Glad to be back.

Mr. Martel: No, some of us have not been around here very long. With your 25 years of experience, you cannot clear up a telephone system and you are going to have this piece in place that is going to make it work much easier. I suggest to you that, at noon, you go and read the telephone book and see if you can make head or tail of it. Then come back after lunch and tell me how you are going to make it different so that the public will understand who to write to, when they cannot even find out who to telephone.

Hon. Mr. Scott: The wonderful thing about the system is we think we will be able to tell them who to write to, but if they write to anybody, the information will be provided.

Ms. Gigantes: You cannot prevent people from writing to the Lieutenant Governor.

Hon. Mr. Scott: No, and we do not want to discourage them from doing so.

Mr. Martel: You would not want to discourage anyone.

Hon. Mr. Scott: Where were we? We have done section 33. Section 34 is an annual report by the head which requires him to set out, in what will obviously be a brief document, the items that are contained in subsection 2.

Ms. Gigantes: On that subsection, it seems to me it might be useful for the commissioner to receive in that report an indication of the number of times that personal information, which has not been gathered for a certain purpose, is released for that purpose.

Hon. Mr. Scott: As a monitoring.

Ms. Gigantes: Yes.

Hon. Mr. Scott: That is an interesting suggestion. It may be an administrative rather than legislative matter, and it might be possible to set out the requests on a grid so you would get some kind of sense about what the nature of the requests were, not only personal but also other information, and how often various kinds of refusal are being used.

Ms. Gigantes: I have an amendment to propose on subsection 34(2) which would deal with the item I have raised, any administrative copying you want done.

Hon. Mr. Scott: An amendment restricted to subsection 34(2) is going to be very well received.

Mr. McCann: Section 34a is a section which tries to make a general statement about the availability of the documents described in sections 31, 32 and 41, which is further along and is a directory dealing with personal information banks, to have the availability of these things all in one place, "generally available to the public and shall cause them to be made available to the public in the reading room, library or office designated by each institution for this purpose."

Ms. Gigantes: Again, I would like to see a copying provision in that section. It is disheartening when you get access to records and then you have to sit there and write it. You have to spend hours in a reading room when you might be able to photocopy a few things and trot off with them.

Mr. McCann: We already mentioned section 34b as simply providing that the information has to be given to the responsible minister.

Ms. Gigantes: I find it strange that section would have to be in there at all.

Mr. McCann: As the Attorney General pointed out, some of the institutions have a more distant relation from government. I do not think it would be a problem in practice, but this will make it clear.

Mr. Chairman: We are nearing 12 o'clock and we have just finished what is laughingly known as part II. Is it your wish to embark upon part III, or shall we--

Ms. Gigantes: I am ready to do part III.

Mr. Chairman: You are always ready. I know that. Are there any other comments? Do you want to proceed? It is just that part III does deal with the question of privacy provisions.

Hon. Mr. Scott: And information banks, which are important.

Mr. Chairman: This might be a logical place to break if you want to. Are there any comments any members want to make just before we do break? That being the case, we are adjourned till two. I should tell you it is my intention to try to get through the remainder of the act today and then tomorrow we will be able to proceed on a clause-by-clause basis.

The committee recessed at 11:54 a.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
MONDAY, MARCH 23, 1987
Afternoon Sitting



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Scott, Hon. I. G., Attorney General (St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, March 23, 1987

The committee resumed at 2:07 p.m. in room 230.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: Before we start this afternoon, the goal is to try to complete the walkthrough of the last two parts of the bill by ministry staff. I draw to your attention that we have prepared a black binder. In the binder, in order, is every amendment we have received to date, the way it will be placed when it comes before you. If you hang on to your little black binder, sleep with it under your pillow tonight, we may get through this, you never know.

We are on part III, on the section on protection of individual privacy. Do you want to go through that? It is on page 25.

Mr. McCann: Section 34c is a provision that simply states that part III, protection of individual privacy, does not apply to personal information maintained for creating a record available to the general public. Such records would be, for example, the land registry, personal property, a security system and other public banks of information of that kind that necessarily involve a considerable amount of personal information but, for sound policy reasons, are available to the general public.

Ms. Gigantes: Can we go through a brief discussion of that? Does that apply also to motor vehicle licences?

Mr. McCann: Yes, it does.

Hon. Mr. Scott: We were talking about that this morning. It probably does. There is nothing in the motor vehicle licence act of which we are aware that contemplates or stipulates that the information obtained will be public, but it is de facto public in the sense that people can phone in or pay the fee--there may not even be a fee; I have forgotten--

Ms. Gigantes: There is a fee.

Hon. Mr. Scott: --and get the information they require. So it is de facto public, and it is my guess that the commissioner would conclude that the personal information in that system is maintained for the purpose of creating a record that is available to the general public, even though the act is silent on whether it should or should not be available to the general public.

Ms. Gigantes: I am a bit concerned about this subsection, because whereas I can understand its application and appropriateness when we have something like a land registry system, I have certainly run into examples where the release of motor vehicle licence information is highly questionable.

Hon. Mr. Scott: Can I suggest that the resolution to this problem, it seems to me, is to make the statutes under which information of this type is collected explicit? For example, the land registry system would explicitly say, if it does not and it probably does, that the information collected in the registry is public, and the motor vehicle licence registry act, whatever it is called, would say the information collected under this system is for dissemination to the public or it is not.

In other words, the judgement about whether the collection system you are creating is to produce public information or inside government information should be made in the statute that collects it. It seems to me the issue you raise and the member for St. George (Ms. Fish) has also raised really leads to an amendment not of this act but of the motor vehicle registration act.

Ms. Gigantes: It will be two years before the government goes through other acts and reviews them to make sure that part of that--

Mr. McCann: I think you are thinking of section 60.

Ms. Gigantes: I believe I am, yes.

Mr. McCann: That deals with confidentiality provisions. I think that is a somewhat different problem. That is provisions of a statute that say a certain piece of information may be refused to be disclosed or must be refused to be disclosed. There are a number of these in other statutes.

Section 60 says that this act prevails over them but it does not come into force for two years, and in fact, this committee must examine them all in the interim.

Hon. Mr. Scott: Presumably, though, in terms of motor vehicle registration, we want the information in that system to be available to the public. We may want to circumscribe the circumstances in which it gets out, but we want it to be available to the public, because if it was not and you were hit by a car and you just had the licence number, you would not know whom to sue. The system does exist to transmit information to the public.

Ms. Gigantes: No, if I were hit by a car and knew the licence number, I would presumably report it to the police.

Hon. Mr. Scott: Then they could get information out of the system. The only way of discovering who owns an automobile with licence plate XYZ is to access the motor vehicle registration system.

Ms. Gigantes: Before we deal with this section, I wonder if we could get from the ministry a list of the existing records that use personal information and make that personal information available to the public.

Hon. Mr. Scott: We could give you some examples, but I think the effort to do an exhaustive list could not be completed in the time the committee has set aside for this bill.

Ms. Gigantes: Are there that many?

Hon. Mr. Scott: To be certain we were right, we would have to look at every statute. We can give you some examples of the kind of information that is collected, as in motor vehicle registration. Then it seems to me you, as legislators, will decide whether that information should be made available

to the public or not, and if so, under what terms. That will be for its own statute. If it is made available to the public, then you will not need to be concerned about freedom of information, because if it is already public, you do not need to be.

Ms. Gigantes: I would like as many examples as you can think of, off the top of your collective heads.

Hon. Mr. Scott: As many examples as our beleaguered staff can, in the short time frame available, make available for your delectation.

Ms. Gigantes: I am sure you will assist them.

Hon. Mr. Scott: We are not going running after all this.

Mr. Sterling: Are most of those classifications not in that personal index record we produced about two or three years ago?

Hon. Mr. Scott: Under the restrictive information principles that apply over change of government, we are not given any of the stuff you have prepared.

Mr. Sterling: No, this is a public report.

Mr. McCann: Quite a few of them are quite evident; the companies' registration information and so on. The statute itself says that anybody who is interested can have access to the information, sometimes on payment of a fee or that sort of thing. A large number of those are quite evident, and it is quite easy to prepare a list of those.

As the Attorney General has said, the problem is there is a factual test in the section that says, "maintained for the purpose of creating a record that is available to the general public." There may be some interesting questions about some as to whether they meet that test. We could not undertake to prepare a list of all the ones that would authoritatively be found to be within that section, but we can come up with a pretty complete list in a short time.

Hon. Mr. Scott: Section 35 opens with a definition of "personal information." It builds on the definition of "personal information" found in section 2. It is one of those definitions of personal information that is going to get into Your Morning Smile column in the Globe and Mail. In fact, it is a prudent, sensible definition of personal information, building on section 2.

Subsection 2 is the principle of this portion of the act, "No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity."

So there are three standards and, unless you can meet one of those, any collection of personal information is unlawful. That, frankly, is one of the key sections of this scheme that is missing in many privacy schemes; that is to say, it not only regulates what may go out to people but also it deals with what governments can collect. One of the critical features of this act is that it says, unless you meet one of those three tests, it is unlawful to even collect it.

Mr. Martel: Then my concern this morning about universities could still prevail.

Hon. Mr. Scott: No.

Mr. Martel: Yes, because if you go back to section 2, it says "race, national or ethnic origin." If we wanted to do a search as to whether the old boy network is blossoming again, and my information is that it is--

Hon. Mr. Scott: That is your information even without the information.

Mr. Martel: No. I have a couple of people with whom I worked in the field who are in the universities. They have written me again just recently saying that it continues to expand. If you look at subsection 35(2) and then you go back to the information on page 3, national or ethnic origin--I ask this question because I simply do not know--how would you ever check to see--

Hon. Mr. Scott: That it is being collected?

Mr. Martel:--that it is not illegal to collect it?

Hon. Mr. Scott: I presume that the commissioner will have some responsibility to supervise to make sure that institutions are not unlawfully collecting information. That will be control number one.

Control number two will be that access to information itself will reveal cases where information is being collected unlawfully. I write to some ministry and say, "I want any information you have on me in there." They write back and say, "We have collected the following information." Then I can say, "Under what authority did you collect it?"

The section makes clear that there are only three foundations for the lawful authority to collect under. If the institution cannot bring its collecting activity under one of those heads, then ipso facto what it does is illegal.

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Mr. Martel: Okay, but let us say that the dean is from Illinois and all of a sudden he hires seven people, none of them Canadian, because the old buddy network is at work in the university system, as we know has happened in the past. The old buddy network is what led to the whole crisis we had in the 1970s. We were not doing enough doctoral studies in Ontario and, as a result, we did not have qualified people. My information is that we are running into the same snag now.

Let us say someone decides he wants to find out whether of the seven professors hired most recently by the dean from Illinois in some university, all seven people came from the same university in Illinois. Does this preclude that? That is what I am trying to get at.

Mr. McCann: If the person who was attempting to collect that information was an employee of an institution covered by the act and had no statutory authority to do it, or it was not proper to the administration of a lawfully authorized activity, then the answer would be no.

Hon. Mr. Scott: He cannot collect it.

Mr. McCann: There might be a researcher who was not acting for a governmental institution who--

Mr. Martel: But does this prevent the--

Hon. Mr. Scott: If I were the president of an institution covered by this act and I wanted to hire only University of Toronto graduates, I presume, as president, I could hire only University of Toronto graduates. In your general dissatisfaction with that state of affairs, your control would be an attack on my employment practices. I would not be entitled to collect records of where other people came from, unless I had a statutory authorization or it was reasonably necessary.

Ms. Gigantes: The other thing you could do, which is being done now in the public service, is to send out a survey form to people explaining the purposes for which you are attempting to gather this personal information and assuring them it would not be released in a way that is going to affect them personally but that it is for research purposes. You gather it that way.

Hon. Mr. Scott: That is another way of doing it. The additional difference, of course, is that the information has a degree of anonymity that it may not have if it was collected directly.

Ms. Gigantes: In fact, there is an exemption for research purposes. You do not have to have names.

Hon. Mr. Scott: The key thing to note about this section of the act and, in particular, the interdict of section 35 is that we have gone as far as to say that to collect personal information without this kind of justification is unlawful. In other words, instead of resolving the problem by letting you know what is in there about you, we have gone further and said that government cannot even collect unless it meets one of these tests.

Mr. Chairman: Can I ask what you are going to do with the various police forces who gather in information from other jurisdictions to which this legislation does not apply? They can read it but they cannot have it.

Hon. Mr. Scott: This legislation will have no implications for other governments that are not bound by it. The legislation does not govern the municipality of Metropolitan Toronto or the city of Oshawa or the federal government of Canada. It governs simply our government and its selected institutions.

Mr. Sterling: But it does govern the Ontario Provincial Police who receive information from municipal police forces.

Hon. Mr. Scott: Precisely. It will govern our police force, the OPP.

Mr. Sterling: Yes, but through the Ontario provincial intelligence computer and other information-sharing systems the OPP does receive information from municipal police forces.

Hon. Mr. Scott: They will be prohibited from the collection of any information under section 35 unless they meet one of these standards. They will not be able, nor will any other government institution be able, to collect personal information just because they have always been collecting personal information.

Mr. Chairman: They will have to read it in the Globe and Mail like everybody else does?

Ms. Gigantes: No. Subsection 35(2) says that they can collect it if they can say it is being "used for the purposes of law enforcement."

Hon. Mr. Scott: Yes. That may justify the collection of some of the information they collect. In the view of the commissioner, it may not justify the use of certain other information.

Mr. Chairman: This stuff is airtight. I can see that.

Hon. Mr. Scott: I make the point because one of the features of this scheme that is attractive to me is that apart from simply regulating the flow of information to the public, which is the normal model, this imposes standards on the government itself about what it may collect.

Ms. Gigantes: We can debate various clauses around that too.

Hon. Mr. Scott: Frankly, it is no satisfaction to me to have a freedom-of-information system that does not have this section, because then all I know is that it is being collected and the only people who can read it are the bureaucrats. I do not want anybody to be able to read information of this type unless it is lawfully collected.

Mr. Chairman: Standard and Poor's is in trouble.

Mr. Martel: Out of business.

Mr. Sterling: Before you change anything in this section, I should point out it is almost a match of what was in Bill 80.

Ms. Gigantes: He invented it.

Mr. Sterling: Oh, he did? Have you read section 34 of Bill 80?

Hon. Mr. Scott: Bill 80, oh yes.

Mr. Sterling: You have heard of that, Attorney General?

Ms. Gigantes: Section 36.

Hon. Mr. Scott: Section 36 just deals with the manner of collection.

Ms. Gigantes: On clause 36(1)(d), what kind of "information is in a report from a reporting agency in accordance with the Consumer Reporting Act"?

Mr. McCann: I think it is mostly information regarding creditworthiness, information that is prescribed and set out in the Consumer Reporting Act. Most of it relates to credit history and transactions. Under the Consumer Reporting Act, the consumer has the right of access to that information and the right to disagree and to know and require a correction.

Ms. Gigantes: Why would the government have that information?

Mr. McCann: The government is in the occasional business of lending money to people and granting credit to people in certain programs and would

use this type of information in the same way a private credit granter, a bank or so forth, would. I think that is the context in which it arises.

Ms. Gigantes: I wonder whether you could give us a little list of those too.

Hon. Mr. Scott: Of those what?

Ms. Gigantes: The types of reports held by the government that would contain personal information not provided by the person in accordance with the Consumer Reporting Act.

Hon. Mr. Scott: It would be set out in the Consumer Reporting Act.

Mr. McCann: Yes, we can provide that.

Ms. Gigantes: Can you indicate what the difference is between clause (e) and clause (f)?

Mr. McCann: Clause (e) is primarily aimed at proceedings of a civil nature such as suing for damages or recovery of a debt. By and large, I do not think those types of activities would come within the definition of "law enforcement." Therefore, they are separate.

Ms. Gigantes: Could you give us some examples under clause (e)?

Mr. McCann: An action against someone to recover a debt or an action for damages; that is, a civil action brought on the basis that someone had caused damage to property that belonged to an institution or that someone owed money to an institution and the action was being brought to recover the money.

Hon. Mr. Scott: If a community college covered by this act sued for recovery of a fee the student never paid, that would be not a law enforcement proceeding, but a proceeding or possible proceeding before a court or a judicial or quasi-judicial tribunal.

Ms. Gigantes: Why would the government have personal information not provided by the person in question that would be pertinent to such a proceeding?

Mr. McCann: It might be necessary to know where the person was employed or some facts about him--his address, for example--that might not be known to the government at the beginning of the proceeding.

Ms. Gigantes: Is not the definition of "law enforcement" that we have in the bill one that means something that can lead to a proceeding where there could be a penalty?

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Mr. McCann: "A penalty or sanction." We interpret a civil action for damages not to be a penalty or sanction within a relevant sense in the definition of "law enforcement."

Hon. Mr. Scott: If a community college sued for the recovery of a tuition fee that was never paid, that would not be a penalty or sanction. That

would be in the nature of damages liquidated for the penalty; it would not be a fine or a sanction.

Ms. Gigantes: There would be interest charges. That would not be the same?

Hon. Mr. Scott: That would not be a fine or sanction either. That is in the nature of damages and therefore it would not be a law enforcement proceeding. It would be a civil proceeding in collection of a debt, and frankly, if I were the head of the college, before I sued for the tuition fee, I would want to know where the ex-student lived and whether he had a job, because there would be no point in suing him if he did not have a job. That might be the collection of personal information under the statute.

Mr. Chairman: Would this also apply to things such as a liquor licence?

Hon. Mr. Scott: It might.

Ms. Gigantes: Where would you get the information that he did not have a job except from him? I really find it difficult.

Hon. Mr. Scott: There are lots of ways to find out whether someone has a job without asking him. One way is to ask his room-mate or a friend or the place where you believe him to be working: "Does John Jones work there? He says he does." "No, he does not." Then you have a very good piece of personal information that he does not have a job.

Mr. McCann: Another type of situation that occurs is where a ministry is acting on behalf of someone--for example, a spouse who is seeking to recover maintenance--and the ministry may well have to ask the creditor spouse for information about the debtor spouse. The debtor spouse is unlikely to come forward with that information. The creditor spouse may have to give information as to bank accounts, job, whereabouts, assets and all sorts of things so that the action can proceed. I do not think that kind of proceeding would fit within law enforcement, so something such as clause (e) is necessary to allow that type of collection.

Ms. Gigantes: Good. Could you give an example of what might be meant by clause (g)?

Mr. McCann: For example, under its legislation the Ontario health insurance plan gathers information on a subscriber basis and the subscriber is often an employee. The information that is gathered will relate to spouse, children and other dependents. That is all gathered from the subscriber and would therefore be indirect collection unless there were some exception. The exception is found in the OHIP legislation and that is why clause (g) is necessary, to allow other statutes to apply.

Ms. Gigantes: Are there many such?

Mr. McCann: We have a few examples. OHIP is the major one because of the subscriber basis of its operation. There are a few others. The Support and Custody Orders Enforcement Act allows certain types of information to be gathered from a public body or certain other people in relation to the spouse who is a debtor, so that is another example. There are a few others. I do not

think we have found more than five or six examples, although we can undertake to try to provide them to you.

Ms. Gigantes: It would be useful to have a list.

Mr. McCann: That is not too difficult.

Mr. Villeneuve: Does the information gathered under the Ontario student assistance program apply in that instance? Some pretty personal financial information goes in there.

Mr. McCann: I think most of that information is supplied by the student, so it would not violate the standard here, which is that it is to be collected directly from the individual to whom it pertains. To the extent that information might be collected from someone other than the student--for example, a parent--the student could authorize that, which I believe happens in some cases. Going beyond that, I am not sure whether the legislation under which that is done would authorize indirect collection without the student's authorization. I would have to check that.

Mr. Sterling: A brief was presented to us that indicated there may be some problem in collecting information from certain kinds of individuals in our society; for instance, children, minors or perhaps people who are incompetent. How do you approach that? How do you get the information about these people?

Mr. McCann: We have proposed a further amendment not found in the Attorney General's reprinted bill. It is in the amendments tabled today with regard to individuals who are mentally incompetent. It would allow their rights or powers to be exercised by the committee or by the public trustee where the public trustee is the committee, and in the case of a child, by the person who has lawful custody. It is a new section 59b.

Mr. Sterling: I am sorry; I looked under--

Mr. McCann: It is in the material distributed this morning.

Hon. Mr. Scott: That representative would then complain or refuse to provide.

Mr. McCann: That is right, or alternatively, he could authorize another manner of collection where it was to the benefit of the--

Mr. Sterling: I am sorry; I thought it would be under the same section.

Mr. McCann: It is a general provision that deals with persons who are under disability in this context and others.

Hon. Mr. Scott: Now we are on to section 37. I have a low-key role here. You explain section 37.

Mr. McCann: Section 37 requires that personal information that has been used by an institution be retained for a period to be prescribed by regulation. Section 37 also has several other things. An institution is to ensure that personal information is not used unless it is accurate and up to

date. There is an exception to that in the law enforcement situation. Personal information is not to be disposed of except in accordance with regulations.

I think it is important to note in subsection 37(1) that, as a matter of fact, most personal information is retained for considerable lengths of time after use by government institutions. The purpose of this section, however, is to make sure it is retained long enough to give the individual an opportunity to have access to it and to make sure it is correct and exercise his or her rights in regard to it.

Ms. Gigantes: May I ask about subsection 37(2)? Given the prescription we have had before about the collection of information, why would an institution have information on file that is not reasonably accurate and up to date?

Hon. Mr. Scott: Because that is the manner in which it was collected. An institution that is authorized to collect information via a third party might in fact collect that information, and you can imagine how it would become out of date. It would become out of date simply by the passage of time.

Ms. Gigantes: What about reasonable accuracy?

Hon. Mr. Scott: It might be made plain to the institution that the method by which the information was collected was not a method that was likely to produce accurate information. The first part of this scheme is to restrict the way information can be collected, but the second part of it is to ensure that the collection methods are likely to lead to reasonable accuracy. If the institution head believed that the information collected was inaccurate, this is an injunction that it shall not be used.

Ms. Gigantes: Then why have it on file? Why is the head of the public institution in this subsection assumed to have the right to keep it on file if it is not reasonably accurate?

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Hon. Mr. Scott: He is entitled to dispose of it, and would do so, but you would want to keep it on file in the event that anybody who thought his or her rights had been affected by it would have the opportunity to correct it. It does not follow that all information collected by government is accurate. You surely know that. One of the purposes of this act is to permit you to have the opportunity, when information is collected about you, to ensure that it is accurate. We also want government not to use such information if it believes it not to be accurate--and thus we say this--and to dispose of it.

Mr. Sterling: You are going around in a circle. You are saying we are going to keep this so that you can correct it.

Ms. Gigantes: That is right.

Mr. Sterling: If you dispose of it, there is no need to correct it, is there?

Hon. Mr. Scott: Look at how Bill 80 dealt with this. Do you remember how Bill 80 dealt with it?

Mr. Sterling: That was a long time ago.

Hon. Mr. Scott: Bill 80 did not deal with this. This was one of the major difficulties with Bill 80. It did not deal with this at all. It did not grapple with the problem of information that may be reasonably inaccurate or out of date.

Mr. Sterling: Oh, yes it did.

Hon. Mr. Scott: It is coming back to you now.

Mr. Sterling: Yes, it is.

Hon. Mr. Scott: That is not the way I read the act.

Mr. Sterling: Perhaps you should read it again.

Hon. Mr. Scott: Perhaps you can tell me how it dealt with it.

Mr. Sterling: We will start on section--

Mr. Chairman: I am having a hard enough time dealing with Bill 34. Can we do Bill 80 some other day? Are we finished with section 37?

Ms. Gigantes: No, absolutely not.

Mr. Chairman: No, you are not. You want to do a bit more.

Ms. Gigantes: I suggest that we could get around it--this is part of the problem I have and it might please other people too--if we remove "reasonably." I think the head of an institution should not be allowing the use of information unless the head of the institution believes it is accurate.

Mr. Chairman: Boy, that is quite a shift. You want governments to hold on to accurate information now?

Hon. Mr. Scott: No, but look at this situation. As we have just seen, the Ontario health insurance plan collects from the subscriber information about other family members. When OHIP collects that information, it has no way of knowing whether the information provided is accurate or inaccurate. It is relying on the accuracy of the person who collects and provides the information, who will be the subscriber or head of the family. If it turns out that it finds inaccurate information has been provided by the head of the family with respect to one of his or her children, the question then becomes: Is one to cancel out all the information or only that piece of information? Certainly, one would not cancel out all the information that has been collected by OHIP.

Ms. Gigantes: This is a straw child.

Mr. Chairman: That would be inaccurate information.

Hon. Mr. Scott: We will be glad to have your suggestions about how this can be done in a way that is workable if you find these concepts unattractive.

Mr. Chairman: I think you are going to get them. Keep rattling the cage.

Ms. Gigantes: On subsection 37(3), we have an exemption to the use of unreliable, inaccurate and out-of-date information for law enforcement and where the head of the institution tells whomever he is giving the information to that it may be inaccurate, not up to date and not reliable. That seems awfully loose.

Hon. Mr. Scott: Here is the problem. Let us assume a law enforcement officer is getting information from, in the vernacular, a stool-pigeon on the street, and let us assume that half the information you get by actual survey is accurate and the other half is all made up. At the moment of receipt of that information, you cannot tell which is which. The only way you can tell which is which is by further investigation or by waiting for a time to find out what happens to be true and what happens not to be true. The issue is should you be able to collect any of that information, none of it, all of it or part of it? If part of it, how do you determine which part, when it is given to you, can be collected?

Ms. Gigantes: No, we are not talking about collection here because the operative verb in subsection 2 is "use." It is not collection; it is use. What subsection 3 says is whatever is said in subsection 2 does not apply in a case where the person we are talking about who receives the information works in law enforcement or is the head of the institution, whether it is the Ontario health insurance plan or whatever--

Hon. Mr. Scott: So you agree it should be collected.

Ms. Gigantes: I do not agree.

Hon. Mr. Scott: Your concern is focused on how it can be used.

Ms. Gigantes: If it is collected, I would like to see under subsection 2 that there is an onus on the institution to make sure that it is accurate and up to date. I can see no reason why we should provide a holus-bolus exemption under the subsubsections of subsection 3.

Hon. Mr. Scott: A person comes to a police station. Let us make it an OPP station so it will be covered by this act. The person gives the policeman certain information about the way somebody else is conducting himself: "Someone is down at my apartment building tearing the apartment building apart." The policeman does not have the faintest idea whether that is true or false. He is entitled to collect the information. Is he entitled to use it in the sense of sending out someone to investigate it? Of course he is, so he should be entitled to collect and use that information.

Ms. Gigantes: Fine. Why, under subsection 2, should that file, if it turns out to have contained false information and to have led to no law enforcement proceeding, be held on to? Why, under subsection 3, if it is held on to, can it be passed on to someone who works in law enforcement on another matter?

Hon. Mr. Scott: It may be half true and half false.

Ms. Gigantes: What is accurate should be in the file and what is inaccurate should not be held in the file.

Hon. Mr. Scott: In law enforcement, a lot of information is collected that is false. The purpose of the trial process, by and large, is to sift out what information tendered by way of evidence is true and what is false. This is a difficult and sophisticated exercise that is conducted with fair to middling results. The reality is that the collection of the information, which forms part of that process, cannot be subjected to that kind of control or you simply would not be able to collect anything.

Ms. Gigantes: Subsection 2 allows that information to be held.

Hon. Mr. Scott: I look forward to your amendment.

Ms. Gigantes: Subsection 3 allows it to be retransmitted when it is inaccurate. I do not think that is satisfactory.

Mr. Martel: Clause (b) bothers me. I understand your difficulty. I have difficulty if you know the information is not correct and it is being passed on to someone else and may not be reliable. That is the part I worry about. Why is it going to somebody else on a supposition that it might not be reliable? Why would you pass that information on?

Hon. Mr. Scott: The information may be reliable or it may be unreliable. This is not to say it does not lose its quality as useful information. We all act on information that we recognize may be unreliable. To guard ourselves from making mistakes, we are conscious of the feature of its unreliability and we build into the way we use that information some sense that it is not guaranteed.

Ms. Gigantes: We call it "gossip" and we do not approve of it in a social sense.

Hon. Mr. Scott: No, we do not. That is to trivialize an important exercise. Everybody makes judgements every day about important matters based on information, part of which deals with certainty but part of which may be unreliable. For example, when you are in your apartment, if you are told by the person down the hall that it is raining outside, you take an umbrella with you. You have acted on the basis of information that you recognize to be unreliable. The way you have done it is you have measured the downside as well as the upside. The risk of acting on this information is no greater than the risk of not acting on it. That is what people do all the time in making judgements.

Ms. Gigantes: We are talking about law enforcement agencies; we are not talking about the weather.

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Mr. Chairman: If I can intervene here, one of the stickiest problems I would see would be that with provincial agencies or ministries that license, there is a regular flow of information that--I do not know how best to phrase it; it is not gossip but it is not documented either. Confidential information generally is transmitted to those who are dispensing those licences, of a nature which says this person is known to associate with these people or has this kind of background. In a sense, we are transmitting facts, we think, but no one cares to stake his reputation on that, because he does not want to do it in open session.

If you have been on a municipal council, you will know taxi licences are

granted, and one of the things you get is what is delightfully called "a report" from the police chief or someone on his staff. When you give a licence for a bingo, you get the same kind of a thing. Provincial bingos are run on that scale too, and trucking licences, liquor licences, licences to operate amusement parks. All kinds of things require reports from agencies which bring to you whatever information they have, some of which is a factual, clear, criminal record, some of which is not.

We are getting into that area here where I am kind of caught. Having done that, I know that if you said you cannot put on record anything you cannot clearly substantiate, I know what would happen. The police officers would come in behind closed doors and say: "Here is the written record on this individual who has applied for a licence. Read it." After you had read it, they would say, "Now I want to tell you about this guy."

That is the quandary I am in. I do not think you can ever stop the flow of information. You could perhaps regulate it a bit more. I really am nervous when you talk about things being relatively accurate.

Ms. Gigantes: Reasonably.

Mr. Chairman: Reasonably pregnant or something. Words like that do not help.

Hon. Mr. Scott: Let me give you this example. Let us talk about licensing, because I think you have focused on a major area where it is a concern.

Citizens write to the Ministry of Consumer and Commercial Affairs telling the ministry that the local liquor establishment stayed open half an hour longer than it should have last Saturday, or that it served two 16-year-olds who were obviously 16, or that it is constantly serving drunks, or that it is delivering wine and booze under the counter to take home. That information may be malicious gossip, but that information is received. We do not say to people, "We do not want to listen to your complaints," and hang up. We receive that information, and that information may lead to an act. That is to say, it may lead to an investigation, but it does not lead to a conviction or the withdrawal of a licence or anything of that type.

The issue is that if we can collect and use only information we can certify to be true, the investigative mechanism, which is so important to our regulatory process, either is not going to occur or is going to occur without any recording at all of what we acted on, in the way you suggest.

Mr. Chairman: My problem is that if I restricted this a great deal, the report would come in and say, "Here is somebody who is applying for a liquor licence." On the report, it would have to say--the accurate statement would be--"He previously held a licence and we received 16 complaints." We would not be able to determine what was the nature of the complaints. Were they complaints of a malicious nature? Were they serious complaints? Were they 16 complaints laid by one person?

How do I get that knowledge transmitted, and how much of it do I want transmitted? That is my quandary.

Ms. Gigantes: It seems to me those are all questions that can be

answered yes or no, and one can feel that one is giving accurate information or inaccurate information.

Mr. Chairman: I am not sure it always falls quite that way. I wish it did. I am not sure it always does.

Ms. Gigantes: Further, then you have to ask yourself, under subsection 3, do we allow this information to be passed on for the purposes of law enforcement?

Hon. Mr. Scott: Certainly, because that is how you investigate it. You pass it on. You say: "I have received 15 complaints about this establishment about the following things. I received a complaint that last Saturday, two 15-year-old kids with the following names were in there drinking and the waiter was serving them." I have no idea whether it is true or false. I pass on that information to another arm of government to go out and interview the kids or to go and conduct an investigation to see whether it is true.

The saving grace is that the collection of that information cannot be used to deprive anybody of anything. That is what a court process or a judicial hearing is for. But law enforcement has to permit investigation of that.

Mr. Chairman: The only argument I would make with you is that it does very often deprive people of licences, for example, to run various events. The reason they are not given a taxi licence, a bingo licence or a liquor licence is not that they have a criminal record or that they ever did anything wrong or that there is anything on record of prosecution; what is stopping them from getting a licence is the fact that somebody said, "This person associated with three other bad people and you should not give him a licence," and the person does not get it.

Hon. Mr. Scott: That should not happen now, because there was recently a case that says you cannot refuse a liquor licence, for example, on the basis of information like that. I know in the bad old days, happily behind us, it may have occurred.

Mr. Chairman: Now that we are without sin, it will not happen any more.

Hon. Mr. Scott: I am not saying we are without sin; I am saying that under the Charter of Rights and Freedoms, the court has now got a handle which it can use on this kind of exercise. If we are disclosed to have the sin of our predecessors, we will be caught. That is a great inducement to be free of sin.

Mr. Chairman: I like that line "we will be caught."

Ms. Gigantes: This section clearly creates a lot of problems.

Ms. Caplan: Where you would have that information in the file and an individual could request to see what is there and the grounds that were used in determining the giving of the licence, this kind of legislation would permit that individual to say: "This information is inaccurate. This was used contrary to the law." It would give him what he does not have now, and that is--

Mr. Chairman: There is a problem here that we will work out as we go through it.

Mr. Sterling: In looking at subsection 37(3)--when the Attorney General drew my attention to Bill 80, I thought I would look back at Bill 80 to see what we did there. In Bill 80, we provided the same kind of exemption, except we said that if you are a recipient of information under these circumstances, whether or not you are a law enforcement agency, you still had to be given a warning that the information perhaps was not reliable. That has been taken out here, and it basically says one law enforcement agency can give to another without warning the recipient that this information may not be correct. Why did you do that?

Ms. Caplan: Clause 37(3)(b) says, "where the head of the institution informs the recipient of the information that it may not be available."

Ms. Gigantes: There is an "or" between clause 37(3)(a) and clause 37(3)(b).

Hon. Mr. Scott: I guess we may have overreacted to everything in Bill 80, but we will certainly look at that. That sounds like a very progressive piece of legislation.

Mr. Sterling: What? Bill 80?

Hon. Mr. Scott: That part of Bill 80.

Mr. Sterling: That is the first time I have heard you say that.

Hon. Mr. Scott: It is the first part of Bill 80 I have heard of that I find a turn-on. The question I have is--

Mr. Chairman: No, do not ask. I know the question. We do not want to hear it.

Hon. Mr. Scott: --how did it get into Bill 80? It is good stuff.

Mr. Bossy: Just a comment. You are talking about statements and being able to verify them. There is no place that I have heard more statements than in the Legislature.

Mr. Chairman: And you stand and applaud.

Mr. Bossy: Do you record that, or do you throw them out? Then there should be no recording of statements--

Hon. Mr. Scott: It does not have to be reasonably accurate in the Legislature.

Mr. Chairman: First we record it and then we throw it out.

Mr. Bossy: That is what comes to committee.

Ms. Gigantes: On this, I remind members of the committee that what we are talking about in this section is personal information. Personal information means information about race, national or ethnic origin, colour, religion, sex, blah, blah, blah, psychiatric, psychological, employment history, criminal history, identifying number, address, personal opinions,

correspondence--it covers a whole lot of stuff. If you have stuff in records--we are not just talking about somebody's criminal record; we are talking about a lot of very personal stuff which, under section 37, may end up in a reasonably accurate state in somebody's files. It may be reasonably up to date. It could be passed on to somebody in law enforcement--

Mr. Martel: Or anybody else.

Ms. Gigantes: --and it could be passed on to anyone else if that other person is told that it may not be reliable. That is quite a load.

Mr. Martel: That is what I said.

Mr. Chairman: The quandary I would put to you is that if you insist, first, that all such information be dead-on accurate, you will eliminate virtually all police files, for starters. If someone had to verify or make a statement that "all information in this file is absolutely accurate," there would be virtually no information in there except for convictions. If you do not allow some latitude, you will have a problem with that.

In my view, the flip side is just as bad. The fact that there is no provision for accuracy in such things and records--if you have seen such files, you are aware that the files are full of observations from various officers, most of whom you do not even know, which may or may not be accurate. It is kind of taken with a professional grain of salt, but it is a difficult area.

Ms. Gigantes: Institutional gossip is what it is.

Mr. Chairman: Yes, it is.

Mr. Martel: It does not say just the police. I have listened to the Attorney General carefully and he is right when he talks of policing and that whole area.

Hon. Mr. Scott: It is law enforcement.

Mr. Martel: What worries me is that we are not talking just about that in that section, are we? We are going beyond that scope. That is what worries me. That is why I said those words bothered me; they may not be reliable. I can understand your concern if it pertains to police investigations and things like that. We are not restricted to--

Hon. Mr. Scott: Subsection 37(3), which is what we were talking about, is law enforcement and law enforcement is by definition--

Ms. Gigantes: No. Clause 37(3)(b) says, "where the head of the institution informs the recipient...." Who is the recipient?

Hon. Mr. Scott: No. The opening words of subsection 37(3) say "Subsection 2 does not apply to personal information collected for law enforcement purposes." So, before you get to clauses 37(3)(a) or 37(3)(b), you have to have personal information collected for law enforcement purposes.

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Ms. Gigantes: Yes, but it can be passed on to somebody who is not in

law enforcement. That is why there is an "or" between clauses 37(3)(a) and 37(3)(b).

Hon. Mr. Scott: I accept that, but I think--

Ms. Caplan: If the information were made available for other than law enforcement purposes--and correct me if I am wrong--the information would be made available to that individual to ascertain whether it was reasonably accurate. That is where the whole question of licensing and so forth would come in. So the protection there is really for the purpose of law enforcement and not for any other purpose that is unrelated to law enforcement.

Mr. Chairman: Again, my chief problem is that I do not see a good way to move through this. I can see where this act purports to say the information is transmitted from the law enforcement agency to the licensing agency. We can make some stab at trying to see that that is accurate and that they get access to that. I am oversensitive I guess, but I am mindful that if you shut down that completely, the police record will be completely accessible, and then I am very much concerned that what is going to happen is you will have a piece of paper that is the official police record, the official transmission of information, and a phone call will deliver the actual information. That concerns me.

Ms. Gigantes: That is not what we are talking about, though, on this section. What we are talking about is setting up some defences for the person about personal information collected on him or her to make sure that inaccurate, unreliable, out-of-date information is not being shipped around through the aegis of law enforcement agencies.

Mr. Chairman: Yes. I think you can do that.

Ms. Gigantes: We have just been told by Ms. Caplan, with agreement from the Attorney General, that if the information is going to be used for purposes other than law enforcement, then the person about whom the information has been collected will be informed. You know that a person about whom information is collected for purposes of law enforcement does not have the right under this legislation to know that information is being collected about him for law enforcement purposes. You are into another snake eating its tail.

Mr. Sterling: Let us take the example we have here. A law enforcement agency is asked by the issuing authority for a police check on somebody. As I understand it, a law enforcement agency may give to that licensing authority information that this person was associated with somebody else, or whatever it is, but this may or may not be accurate. That is what this legislation says. Can the applicant get at that information once it is in the hands of the licensing authority?

Hon. Mr. Scott: We will look into the problem that you raise. Fundamentally, it is one being raised about the transfer of information from the law enforcement system to another system. We will be happy to look at that for you.

The point I want to make, where we started off, is that some of the suggestions made about the collection of reasonably accurate or reasonably inaccurate information, if adopted, would hobble the law enforcement system. If we are focusing now simply on the question of transference out, we will be happy to look at that for you. If it is the view of the committee that law

enforcement agencies should be empowered to act only on reasonably accurate information, the fact is that you are not going to be able to make that kind of assessment at an appropriate time.

Police departments would prefer to have reasonably accurate information, but that ain't what they get. They have to deal with what they get. When there is a murder and you go out and start interviewing people, you get a lot of inaccurate information. Much of it comes from the killer. But you have to proceed with a false alibi. The collection of a false alibi is the receipt of inaccurate information.

Ms. Gigantes: Subsection 37(2) does not deal with law enforcement agencies. Subsection 37(2) is on "institution."

Hon. Mr. Scott: I thought you were on subsection 37(3).

Ms. Gigantes: We are on both.

Hon. Mr. Scott: The fire in your eyes when you turn to law enforcement. Do you never have to call a policeman?

Ms. Gigantes: You would like us to focus exclusively on subsection 3, but I still have questions about subsection 2. When you suggest that subsection 2 is providing all this leeway for all public institutions, or institutions under your new amendment, for purposes of law enforcement, that is not accurate.

Hon. Mr. Scott: We will look at it for you.

Ms. Gigantes: Subsection 2 does not relate to law enforcement.

Hon. Mr. Scott: I do not want to create a situation where, when you first meet a policeman and want to make a complaint to him, he says, "Ms. Gigantes, I am sorry, but I cannot hear your complaint because I am not certain it is reasonably accurate." I would form that judgement about it, but I do not think he should be allowed to. I think he should be obliged to investigate your complaint like anybody else's.

Mr. Chairman: What a guy.

Ms. Gigantes: Am I ever delighted.

Mr. Chairman: Don't you feel warm?

Ms. Gigantes: With him to protect my rights, wow.

Mr. Chairman: I am going to Chile where it is free.

Mr. Martel: He talks about rhetoric, holy smoke.

Mr. Chairman: In going through this intricate exercise, one of the things the committee saw in the United States with its act was that in transmitting information from police forces of various kinds, one of the techniques there was that no information is actually transmitted. You simply need a security clearance. In other words, when a licensing agency asks some criminal investigation unit about a person, it does not tell it anything. They just say yes or no. You have no access to the information because it is protected, as it is in this act, under various protections for police forces.

What happens is that you have a security clearance failure and that is a death knell for which there is no access in most of those jurisdictions and you are dead in the water. -

Hon. Mr. Scott: The courts in Ontario have made it virtually impossible for that to happen. When I graduated from law school there used to be lots of licensing statutes that required a good character before you got a licence. Even if such existed today, the courts would ensure under the Charter of Rights that if you were refused a licence, that if you were given the detail of the bad character on which the licensing agency or its collector relied, the difficulties you are describing now are really difficulties our courts have in hand by use of the charter.

Mr. Chairman: That is what makes me nervous.

Mr. Martel: The lawyers are involved.

Ms. Caplan: I think it will be helpful if we separate out the concerns and deal with subsection 2 separately. When you mix it up with subsection 3, that is where the debate gets heated. I think the point of transfer of information was a second--

Ms. Gigantes: There is debate on both.

Ms. Caplan: Perhaps we could debate them individually as opposed to together. I thought we were also debating subsection 3.

Hon. Mr. Scott: I would consign you all to municipal politics if I had my way, but I cannot.

Mr. Chairman: We know that.

Ms. Caplan: I think it is important to keep them separate as we go through them.

Mr. Martel: You would have a one-party system.

Hon. Mr. Scott: No, I would have selected ones; one of you and three or four of them.

Mr. Chairman: Back to the work of the central committee. Are there any more comments on section 37? We are doing so well. Section 38?

Mr. McCann: I think sections 38 and 39 should be considered together. Section 38 says, "An institution shall not use personal information in its custody or under its control," except with consent, "for a consistent purpose" or for a purpose for which it "may be disclosed to the institution under section 39."

Ms. Gigantes: How does that relate to section 37?

Mr. McCann: It places limits on the use of personal information in addition to the question of whether the record is accurate and up to date. It cannot be used unless the person has consented, or it is a consistent purpose or it "may be disclosed to the institution under section 39."

Mr. Sterling: Before you go to that section, on subsection 37(4), the archivists were indicating to us that under their act they have an

authority that the archivist has to approve the destruction of every official document. How does subsection 37(4) tie in with that?

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Mr. McCann: I believe the Archives Act says you cannot destroy a government record without the consent or authorization of the archivist. That would remain in place, so I do not think the disposal that is contemplated here could be destruction other than as provided by the Archives Act. We are talking about other kinds of disposal; for example, where it is stored and that sort of thing, not necessarily destruction. Destruction would have to take into account the Archives Act.

Mr. Sterling: The problem is that there are two ways to look at personal information. I may move an amendment, for instance, to section 36, which says you have to indicate to the person you are collecting information from the length of time you intend to keep that information. If that were the case, then I would want to be assured that if I were a citizen supplying information to the government of Ontario, it would be destroyed five or 10 years hence or whatever the time period for which I had given that information. How do I get around the Archives Act under those circumstances? I cannot.

Mr. McCann: I do not think the act provides a right to the individual to require that a record be destroyed. The problem is that sometimes the chain of records will relate to transactions. It may be very much in the citizen's interest at some point down the road to be able to reconstruct that chain of incidents through the records to show that he or she was unjustly denied a benefit or some such thing.

The act requires that the record be kept for a sufficiently long time that the person can exercise his right of access to make sure the information that was used in conducting a transaction was correct, but I think it is subject to the Archives Act in respect of the question of destruction.

Hon. Mr. Scott: Is there anything more on section 38 or 39?

Mr. McCann: It is probably useful to read section 39 and then section 39a along with section 38. Section 39 deals with disclosure, "shall not disclose personal information in its custody or under its control except" in a number of circumstances, which are set out in the clauses.

Section 39a, which is a proposed addition of the Attorney General, deals with what is a consistent purpose in the case where information is collected directly from an individual, which relates both to clause 38(b) and clause 39(1)(ab). Then there are a number of other circumstances set out in section 39. These are quite central provisions in the privacy scheme, because they place restrictions on how information may be used and how it may be disclosed.

Ms. Gigantes: May I ask about subsection 39(1) to begin with? We have a number of people specifically named as people who can act on behalf of the person about whom the personal information has been collected, but we do not have, for example, a union representative or an advocate in the sense that we now have them operative and, presumably, will have even more in the future in Ontario. Would they be covered under clause 39(1)(aa)?

Hon. Mr. Scott: I would have thought they would be covered under general principles. If the person has the right to make the request or resist

the disclosure or whatever the function of the act, then that person can retain any agent of the normally recognized type in assisting him or in acting for him. He can retain a lawyer to make his request.

In the same way, I think a business agent of a trade union is generally recognized now, certainly with respect to almost all information--

Ms. Gigantes: We have not said that. We have said a member of the Legislative Assembly, the Provincial Auditor, and so on.

Hon. Mr. Scott: We have not said it and we might say it. The point I am making is that the people to whom we have said it are people who are at one remove, who have no connection with the person entitled to make the request. What you are saying is that we should build in a provision for the person's personal representative.

Ms. Gigantes: Clause (h) is the person's personal representative.

Hon. Mr. Scott: Yes. Then I think that would cover it, "to a member of the Legislative Assembly."

Mr. McCann: Only where the person has been incapacitated or authorized by the next of kin or legal representative.

Mr. Chairman: The attempt has been to identify as many people as we can think of who would logically represent an individual. The problem I have with it is that there are some I can think of already who are not named here. There may be other circumstances, for example, where I may not really be representing a person, but I may want to get whatever information the government of Ontario might have on file on people who worked in this plant from 1953 to 1957, where they are now and what their subsequent work experiences would be. I may not really care who they are.

Hon. Mr. Scott: If you do not care who they are, you are not seeking personal information.

Ms. Gigantes: That is right.

Hon. Mr. Scott: If you just want to know the number of bodies employed at the plant or something, that is not personal information. Subsection 39(1) opens, "An institution shall not disclose personal information except."

Ms. Gigantes: Take a look at clause 21(1)(e).

Mr. Chairman: I understand the other provisions, but the problem I am having again is that I may well want to do a personal case study of individuals; for example, in most of the health and safety work we have done, where there has been a general investigation of conditions in a work place. It always winds up that no matter what the work place was like, everybody smoked, and the reason they all died was not that they worked in the plant, but that they all smoked.

Hon. Mr. Scott: Ms. Gigantes is right. If you cannot get that under section 39--and maybe you can--you can certainly get it under clause 21(1)(e), which deals with a research project where identifying information is inevitably required if the research is to be meaningful.

Mr. McCann: The problem which I do not think anybody has settled is where the person to whom the information relates has clearly authorized someone to be his or her representative. That is not a problem perhaps, but there are lots of other situations--parent and child, various kinds of representation--where it may be that the representative is not really seeking the information on behalf of the other person but on his own behalf.

The bill tries to make everybody's privacy his own right, which nobody else can claim on his behalf, and so you have a tension, which is hard to resolve, between the convenience of one person representing another and the--

Ms. Gigantes: As elected representatives, we are into using the practice of a consent form, a release form. There is nothing in here that specifies that.

Hon. Mr. Scott: The opening words of clause 39(1)(h) say, "to a member of the Legislative Assembly who has been authorized by a constituent." I take it the consent form, if it did nothing else, would authorize you.

Ms. Gigantes: Yes, but there should be other people who would be similarly authorized.

Mr. McCann: Yes.

Ms. Gigantes: An advocate in a psychiatric institution.

Hon. Mr. Scott: What do you mean by a psychiatric institution?

Ms. Gigantes: A psychiatric facility.

Hon. Mr. Scott: No. I think there you are focusing on the tension that was previously described, which is, how far do we want to go in allowing other perfectly good people to authorize the release of personal information about us, or do we want to regard this as a very personal matter and restrict the number of people who can release personal information?

Ms. Gigantes: Suppose I want an advocate to work on my behalf, and he or she cannot do it?

Hon. Mr. Scott: The advocate would then become--and we may have to expand these words--the "legal representative of the constituent," in the last words of clause 39(1)(h).

Mr. McCann: If you are a person who is capable of consent, you can consent to disclosure to your advocate. The problem comes with people who are not capable of consent. We have attempted in the amendment we were discussing before--

Ms. Gigantes: Excuse me for interrupting, but I do not want to get confused in this any further than the minister can succeed. The last phrase of clause (h) says, "or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative." That does not authorize the person to give authority to someone else.

Hon. Mr. Scott: No, precisely it does not, and why should it? If the person is capacitated, he can give that authority himself.

Ms. Gigantes: Nowhere in here does it say that.

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Hon. Mr. Scott: If I have capacity, I do not need to authorize anybody to act. I will tell you whether I want you to have this personal information on me.

Mr. Martel: What about what is going on at present with the gold miners? Many of them are dead, and the union is trying to get--it is only in mining that I think they automatically have standing at inquests now. I have helped about three of them, including the Elliot Lake miners and the sintering plant workers in Copper Cliff.

If you were trying to get the information from the Workers' Compensation Board to try to build on, to say, "Look, there is an epidemic here," you would really be blocked unless you were an MPP or a very selective group. You could not have a union that had a researcher gather that material for you.

Hon. Mr. Scott: Surely as a matter of principle we cannot allow people to consent for others just because it is going to be done in a good cause half the time.

Ms. Gigantes: That is not what we are talking about.

Hon. Mr. Scott: Just let me finish. We have to develop a system. With respect to those who have died, the new amendment, section 59 or whatever it is, to which we referred earlier, allows the personal representative to authorize that.

Mr. Chairman: We are saying there needs to be a little clarification on that.

Ms. Gigantes: My concern is that I see no way under section 39 that I can say to someone who is acting on my behalf: "Here is my consent form. You go and get the personal information on my file. I cannot do it, because my spine is severed," or "I am not capable of making out the legalities of it."

Mr. McCann: But subsection 39(1) says: "An institution shall not disclose...except...(aa) where the person to whom the information relates has identified that information in particular and consented to its disclosure."

Ms. Gigantes: Yes, but to whom?

Mr. McCann: To the person to whom the person has consented that the disclosure be given.

Ms. Gigantes: I am not consenting that it be disclosed to anybody.

Mr. McCann: No, you are consenting that it be disclosed to your representative, to such-and-such an individual.

Ms. Gigantes: It seems to me there should be something that covers that.

Mr. Sterling: I am a little concerned about the number of people who have access to the personal information. I do not understand why the Provincial Auditor, the Ombudsman and the responsible minister need that kind of access.

Hon. Mr. Scott: For example, the Provincial Auditor may decide to do

an inquiry into whether the Minister of Health is appropriately administering a hospital facility and admitting to it only people who are in the category for which the hospital was designed. In order to do that, the Provincial Auditor would have to get some sense of the personal information about the people in the hospital.

Mr. Sterling: But he does not need the names of those people.

Hon. Mr. Scott: No, but it might be personal information that would identify them. It is thought that the Provincial Auditor has that kind of supervening right. You may disagree. It will certainly cut down his work if he cannot get that information.

I presume the Ombudsman responds to another kind of generally acceptable inquiry, about which there may be some question in my mind, but we will leave that aside. Any of these can be cut off. I presume what we do not want to do is prevent the flow of personal information collected by government if a useful, nondamaging purpose is going to be served by it.

Ms. Gigantes: Why would the Provincial Auditor or the Ombudsman, if they were doing general inquiries, not have access under clause 21(1)(e), as opposed to this?

Hon. Mr. Scott: They probably have access under the Ombudsman Act and so forth. God, we may be engaged in a purely hypothetical exercise in the sense that I do not take this act to amend the Ombudsman Act.

Mr. McCann: I think the combination of clause 39(1)(j) and the Ombudsman Act would allow the Ombudsman, in the circumstances set out in the Ombudsman Act, to have access to personal information, which is restricted by its having to be relevant to the subject matter of the investigation and so on. I think it could be argued that the Ombudsman does sometimes need personal information in identifiable form in order to conduct an investigation on behalf of somebody else, or indeed on behalf of the person himself or herself.

Ms. Gigantes: In clause (c) and in subclause (d)(i), what is an "arrangement"?

Mr. McCann: In clause (d), which in its current wording is quite close to the federal provision, an "arrangement" is interpreted to mean something that is not a written agreement but that has grown up by the practice of law enforcement agencies exchanging information under the conditions of the arrangement. The fact of the matter is that many law enforcement agencies will not conclude written agreements.

Ms. Gigantes: Do you mean they refuse to?

Mr. McCann: Yes, and the alternative is to provide for disclosure of law enforcement information under an arrangement that has grown up but has not been reduced to writing.

Ms. Gigantes: Would it be within the bounds of freedom of information to ask which law enforcement agencies have refused?

Mr. McCann: I cannot give you a list offhand. We can undertake to.

Hon. Mr. Scott: I think the reason a law enforcement agency would utilize an arrangement rather than a written agreement is that, first, the

refusal to convey information is unlikely to be litigated so you do not need the certainty of a written agreement, and second, the flow of information under an arrangement or an agreement is going to be dependent entirely on the flow of information back. You find that police agencies do not ship information to you if you do not ship information to them, and therefore if that is the modus operandi of the sharing institutions, the informality of an arrangement is precisely what you want.

Ms. Gigantes: Except that if you have an informal arrangement, it is very difficult for anybody who is charged with the responsibility of protecting privacy, for example, to discover whether the arrangement is one that regularly infringes on personal privacy without justifiable reason.

Hon. Mr. Scott: The possibility that the arrangement or the agreement regularly infringes on personal privacy is not going to be a function of whether it is in writing or whether it is informal. It is going to be a function of looking at the information that is exchanged over a period of time and making a judgement about its quality. The fact that the agreement is or is not in writing is not going to tell you whether it is more likely to be abused. The only way you are going to tell if it is abused is by looking at what is in fact shared.

Ms. Gigantes: It might be helpful to a commissioner or an assistant commissioner, in trying to assess the quality and the appropriateness of such a sharing, at least to have the clout of saying, "I want a written statement of what it is you share."

Hon. Mr. Scott: Then you are up against the prospect that if Interpol will not give you a written agreement, you do not get Interpol's information and I presume it does not get yours. What any police agency that is operating its business has to decide in pragmatic terms is, do we get more from Interpol than it gets from us? If we are getting more useful stuff on the detection of crime in Canada from international agencies, we certainly do not want to cut them off.

Ms. Gigantes: I was fascinated to see that "arrangement" was introduced in clause (d) as a new framework.

Hon. Mr. Scott: It reflects the fact that the reality is a lot of these agreements are not written.

Ms. Gigantes: What would be the reason for having "arrangement" in clause (c)? Surely anything that flows from an act of the Legislature or an act of Parliament can be written.

Hon. Mr. Scott: I do not think that is true. There might be all kinds of disclosure that occur between international police forces, for example, that are not referred to in a treaty or act of Parliament.

Ms. Gigantes: That flows from "for the purpose of complying with an act of the Legislature or an act of Parliament"?

Hon. Mr. Scott: "...or a treaty, agreement or arrangement thereunder."

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Ms. Gigantes: If this deals with law enforcement, why have we got clauses 39(1)(c) and (d)?

Hon. Mr. Scott: The reason we have clauses (c) and (d) is precisely the reason given: There are agreements or arrangements under which information is shared. The issue for a freedom-of-information statute is whether, by requiring the disclosure of those circumstances, you cut off the sharing of information. If the answer to that may be "yes," you then have to make a judgement in the public interest as to whether cutting off the flow of that information has significant downsides for your community. Our judgement is that it does, that it is an important aspect of our police work to be able to get assistance from other international police forces.

Ms. Gigantes: What we are saying in subsection 39(1) is, "An institution"--not a law enforcement institution--"shall not disclose personal information in its custody or control...except"--and now read clause (c).

Hon. Mr. Scott: Read clause (d) first: "...where disclosure is by a law enforcement institution."

Ms. Gigantes: I am going to read (c) first, because (c) does come first, and it does not talk about law enforcement.

Hon. Mr. Scott: Agreed. Clause (d) does.

Ms. Gigantes: Then why have we got an arrangement?

Hon. Mr. Scott: Because there may be exchanges of information that are not based on written agreements.

Ms. Gigantes: Why should they not?

Hon. Mr. Scott: Because the parties to them have decided they do not want to write it down in an agreement. The usual reason you do not write something down in an agreement is--

Ms. Gigantes: You do not want people to know.

Hon. Mr. Scott: No; only a person who is very cynical about human behaviour would conclude that. The principal reason you make an arrangement of this type is that the quid pro quo is the very exchange itself and you want to be able to stop delivering information if you are not getting information. If there is a written agreement which compels you to certain obligations, it may compel you but not enforce the other guy, so the arrangement scenario is the one which says, "As long as you keep providing it to us."

Look, the accord might have been unwritten, and if it was, we would judge whether it was working in terms of whether, on a day-by-day basis, each was playing his part, and the day we did not play our part, then votes would stop. The arrangement is exactly the same: the people will provide information to agencies which perform like work in other communities if they get information back. As soon as the information back stops, you want to be able to compel its reinstitution by saying, "We are going to stop sending stuff to you." You cannot do that always if you have a written agreement.

Ms. Gigantes: I like written agreements. It means somebody else can look at it and say, "Should this exist?" Arrangements are something people do that no one else may ever find out about. Particularly in the area of law enforcement, I would like to see us rid ourselves of the notion of arrangements which are outside of any consideration.

Hon. Mr. Scott: I understand very much your motivation, and let me

frankly say I would prefer that all agreements with international law agencies were in writing. I would prefer that they wanted to write down their arrangements with us. But if they do not want to--and they are in the United Kingdom, France and the Federal Republic of Germany--I cannot compel them to write down their arrangements. I then am forced into this position: I can refuse to deal with them if they will not meet my terms, and I have to say to myself, "What does refusing to deal with them mean for the safety and security of the people of Ontario, for whom I have a responsibility?" I would rather have their information if we can save lives and protect the community.

Ms. Gigantes: Can we have a list then of these foreign agencies, governments and so on that will not sign written agreements?

Hon. Mr. Scott: I will undertake to look at that; I will not undertake to provide it to you at this stage.

Ms. Gigantes: I will make application for it under freedom of information.

Hon. Mr. Scott: You had better hurry and help us get this bill through.

Ms. Gigantes: It is going to be a better bill for all your complaints.

Hon. Mr. Scott: All these benefits from your assistance.

Ms. Gigantes: Mr. Chairman, could I suggest that we take a cigarette break?

Mr. Chairman: You are suggesting that to me? I do not want any smoking in this committee.

Interjection: Carried.

Mr. Chairman: I suggest we take about five minutes, and then we can come back. I remind you, I want to get through the walkthrough, the canter-through or whatever it is we are doing here. We are going to break for five minutes.

The committee recessed at 3:35 p.m.

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Mr. Chairman: Okay; we have a quorum. We are on section 39 and we did promise ourselves we would try to get through the remainder of the walkthrough this afternoon. I would very much like to do that.

Ms. Gigantes: Can I ask one friendly question on 39? Why was subsection 39(2) as we had it in the old bill taken out? That subsection read: "A head shall retain a copy of every request received by the institution under clause (1)(d)"--that is for law enforcement requests--"for the period of time as may be prescribed by regulation and shall, upon the request of the responsible minister, make the copy available to the responsible minister."

Mr. McCann: The problem there was that clause 39(1)(d) in the original and in the amended version does not contain any requirement that a request be received. It does not make any reference to that. I am not sure where the subsection came from, but I think it was misplaced.

Hon. Mr. Scott: I can tell you. It was copied from another act and had no application here. That was one of the pressures that resulted when the bill was being drafted before the accord was signed.

Ms. Gigantes: Can I ask about that? When personal information is provided under subsection 39(1) to all these groups and agencies and through law enforcement arrangements and so on, these are uses of personal information for which we are making special exemptions. Certainly in the case of foreign authorities, particularly if you are getting into a question of arrangements, you are saying there is a sharing arrangement or sharing agreement or sharing treaty or whatever that goes on. That covers it all, and there is no way for us to say in this legislation that we shall take note of the exemptions, in a sense, which are granted to foreign powers.

Hon. Mr. Scott: No, that is not what we are saying, and it might be possible to say that. We are saying there is no point in deciding to collect copies of the requests when requests are not required. That is all we have said in removing subsection 39(2).

Ms. Gigantes: Okay.

Hon. Mr. Scott: You go on to ask if it is possible to catalogue disclosures made under section 39. The answer is, "Of course, it is possible to catalogue them."

Ms. Gigantes: I do not think every clause under subsection 39(1) would generate that kind of concern, but certainly some of them would. To me, clauses (c) and (d) would, in particular.

Mr. Chairman: Could I ask whether the annual report would be attempting to catalogue requests, information shared and all that? It strikes me that would be a logical place to try to do that. Part of what we are trying to do here is to guess who will use this and how it will be used and whether it works or not. We need a tracking device by means of an annual report or some method of recording requests for information. Where do we get the annual report in here? Clause 39(1)(d) or where?

Mr. McCann: The personal information index, which is discussed in section 41 and which has to be published at least once a year, requires that principal uses and typical categories of users to whom disclosures are made be identified in respect of each personal information bank and that other regular uses and disclosures be identified.

Section 42 goes on to say that where another type of use or disclosure is made, that has to be reported to the responsible minister. However, those are more on a generic basis--types of uses and types of disclosures--rather than individual disclosures and individual uses. I think it is the directory of personal information banks which requires the current uses and disclosures of information to be updated, but we are talking there about a generic rather than a--

Mr. Chairman: You wanted something more specific?

Ms. Gigantes: Yes. I am particularly concerned about the use of personal information gathered by this government, foreign powers and foreign law enforcement agencies, and I would like those uses to be tracked. Obviously, when you are saying there are no requests, there is never anything in writing; you do not get a phone call saying, "Can I have information on X?" though I think you do.

Hon. Mr. Scott: It is the disclosure you would want to track.

Ms. Gigantes: Yes.

Hon. Mr. Scott: I have no doubt that disclosure can be tracked. If there was somebody counting, I presume we could tell you how many pieces of information we had sent to Interpol last year. We would not, I think, be able to tell you what Interpol did with that or anything of that nature, but we could probably tell you how many telexes went to Interpol.

Mr. Chairman: I think we need some tracking arrangement. For example, most of us were very interested in the summaries that came to us from the American Congress as to who was using their act, how it was being used and what kind of information was being transmitted.

Hon. Mr. Scott: That is different, though.

Mr. Chairman: It is different in a sense, but we want a general tracking ability to see who uses the act, under what sections of the act, whether it is a direct transmittal of information or a refusal, or whether they simply get access to some information. We want to be able to track it.

Hon. Mr. Scott: I think our annual reporting device should be tracking who uses the act. Section 39 is not really a list of people who use the act; it is people who get disclosure now and would get disclosure when this act is passed. If you want information about how many pieces of telexed material we send to Interpol every year and to other police agencies around the world, it may be that information can be catalogued. But that is not tracking the freedom of information act; that is tracking the police exchange of information. It can still be done, and I really wish you would ask the Solicitor General (Mr. Keyes) about it. He should be able to tell you how many telexes he sends to Interpol.

Mr. Sterling: One of the problems I have with section 39 is this. I am sorry, I am not trying to belabour the point about Bill 80, but under Bill 80, when we went to this particular section, we referred back to the process for access; that is, we went back to the access process so that if one institution wanted to get information, it would have to go back through the normal process.

If, for instance, a Minister of Health requested information about my health record--perhaps not the Minister of Health; another minister requested information about my health record--he would have to go through the act. Then Norm Sterling would be notified that somebody was after his record and I would be able to defend myself.

Under this particular section, it appears like a bald statement to certain individuals to get personal information regardless of how sensitive that information might be or whether it is for the particular use they may or may not want or whatever.

Hon. Mr. Scott: The first thing to observe is that section 39 has nothing to do with people who want to access the information act.

Mr. Sterling: That is the problem.

Hon. Mr. Scott: Before you characterize it as a problem, let us just observe that it has nothing to do with people who want to get information out

of government. If the chairman's question is we should be cataloguing who is using the act for the purpose of getting information out of it, fine. I am in favour of that, but section 39 is not people who are using the act or want to use the act to get information.

Mr. Sterling: There is a corollary. There are no protections for privacy because you are not coming under that act.

Hon. Mr. Scott: It has nothing to do with access to the act at all. It is a provision that personal information collected by government under the criteria established in the other sections can be disclosed in the following cases, and in listing those cases we may be restricting the number of cases that exist today. If you want to add up the numbers of disclosures that occur under any of those paragraphs, that is certainly not beyond our capacity to do. What utility that information would have is not quite clear, but we could certainly collect it.

Mr. Chairman: I think the balance we want to be able to strike is that most of us are interested in the access under this act, how many Ontario citizens use the act, in what way and how they get their information; all of that. But we would also be very interested that if our Ontario citizens have to go through this act to get the information, we want to make sure that people outside the province do not have access to all this information and do not have to bother with the act. We want to be able--

Hon. Mr. Scott: You would not, perhaps, want to know particularly how many people had received information disclosed under clause 39(1)(aa). All that says is it can be disclosed if the person to whom it relates consents. The fact that 100,000 rather than 90,000 consent in one year is not going to make any difference to you or to any policy objective of the government.

Ms. Gigantes: We already agreed on that.

Hon. Mr. Scott: On the other hand, you may want to know, as the curious member for Ottawa Centre (Ms. Gigantes) does, what is disclosed under clause (d). We can add up that information in the sense that we could probably get you the number of telexes that are exchanged. We will look at seeing whether we can build in something for that. What that would tell you that is meaningful, I do not know, but that is up to you to decide.

Mr. Chairman: The point is that if people in Ontario are expected to conform to the act in making their application and the safeguards for privacy are there, we want to make sure that the same kinds of rules apply to people outside so that they do not have access to confidential information that our own citizens do not have. That is the kind of argument in which I would be interested.

Ms. Gigantes: There are also questions under subclause 39(1)(d)(ii).

Mr. Chairman: Yes, under a lot of clauses.

Ms. Gigantes: Let me cite an example that concerns me. When the Royal Canadian Mounted Police is discovered to have access to somebody's psychiatric record and uses that record to try to destroy what they have decided is a subversive group, somewhere in the system I want us to be able to track down that the RCMP is using health information in that way. I would like a record there that a commissioner can look at and say, "That is an improper use of that kind of information."

Mr. Chairman: Get the message?

Hon. Mr. Scott: I get the message. I am not sure we can solve that problem.

Ms. Gigantes: I am also concerned that where law enforcement agencies are involved, in this legislation we are really taking a pretty sanguine view of releasing information to them. In some cases, that can be very wrong. If there is a murder in British Columbia and I was a resident 10 years ago in Ontario and I was confined to a psychiatric institution and the BC police have five suspects and I am one of them and they can get access to the fact I had a psychiatric spell in a hospital in Ontario, then I may become a primary suspect.

Hon. Mr. Scott: And you may be guilty.

Ms. Gigantes: I may be guilty.

Hon. Mr. Scott: It may be a case where you should be charged and convicted.

Ms. Gigantes: That is not going to determine my guilt or innocence.

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Hon. Mr. Scott: It may or it may not. Let me be perfectly clear that on law enforcement, I will do everything I can to make sure the court process, which determines guilt and innocence, is as rigorous and fair as possible. There is no question, as far as I am concerned, about proving charges beyond a reasonable doubt and excluding any evidence that is improperly tainted. I am all in favour of that exercise. On the other hand, I am very troubled about imposing limitations on investigation in advance, and I am therefore very troubled when I hear people talk about not being able to collect information, or use it, unless you are satisfied it is reasonably accurate. There are some cases where you would not use it. There are some cases where you might have to use it.

Ms. Gigantes: That is not what we are talking about here.

Hon. Mr. Scott: It seems to me that the purpose you want served is the same as the one I want served, and it is achieved by having police forces that have rigorous and high standards. It is not achieved by restricting the flow of information.

Ms. Gigantes: However perfect a minister you may be in your current role--

Hon. Mr. Scott: Thank you.

Ms. Gigantes: --you do not control the efficacy or the appropriateness of the methods used by police forces in Canada or abroad, nor do you control the court system in other parts of Canada or abroad.

Hon. Mr. Scott: They may ask me questions about it.

Ms. Gigantes: What I am concerned about here was very much indicated by the old subsection 39(2), which you say to me was just a booboo. I do not think it was a booboo.

Hon. Mr. Scott: No, no, no. What we said--I mean, there is no point in being silly about it--was that subsection 2 was removed because there is no requirement for requests. I have said to the chairman that it is perfectly within our competence to collect the numerical numbers of disclosures. I think you would want to go further for your purpose, because the number of disclosures is not going to tell you anything meaningful, except that it is a large number or a small number, and you will not know what to make of that.

If I tell you that last year there were 5,000 disclosures of personal information to Interpol, are you going to say that is an extraordinarily high number? You are not going to have the faintest idea and neither am I.

Ms. Gigantes: I think a commissioner might look at that and say, "I would like to know something about what those were about."

Hon. Mr. Scott: Yes, but you are not going to get that by simply counting them. That is the point I am making. If you want to go further in the direction the chairman has described, that is fine; no problem. But you do not get that simply by counting numbers.

Ms. Gigantes: Your defunct subsection 2 spoke not only to requests but also to the retention of requests. In other words, if the commissioner could not get to this interesting line of inquiry for, say, three or four years, and that might be possible, at least there would be something in existence that might indicate what had been happening with information and what the nature of the information being disclosed was.

Hon. Mr. Scott: I understand your point. We will see whether we can look at it.

Now where are we?

Mr. Sterling: My concern about this section is that in terms of exceptions, it is much more dramatic than the exceptions to disclosure. The exceptions to disclosure are subject to the information commissioner reviewing those exemptions under the disclosure sections. This one is a blanket exemption. What it says to the head of an institution is, "You can release personal information to these categories of agencies notwithstanding that." Presumably the Ombudsman, the Provincial Auditor, the responsible minister and the Information and Privacy Commissioner do not have to justify why they might be using this information or what they may be using it for, or whatever, without the individual being given the protection of being notified that the Ombudsman is requesting this information, that you have the right to resist the Ombudsman getting this information, or whatever.

Hon. Mr. Scott: Do not misunderstand me. Section 39 begins by saying that you shall not disclose any personal information at all except--and then it lists some categories. If you want to take the Provincial Auditor off there, no one would be more delighted than a member of a sitting government. If you want to take the Ombudsman off, that is fine. If you want to take all these categories apart, I have no trouble with that. What we have created here is a system in which the commissioner can review whether the disclosure comes within the exceptions because an issue will always be whether it was accepted under section 39 or whether it was prohibited. The commission will have the right to examine that.

Mr. Sterling: But I do not know that as an individual. I do not get notice that the Ombudsman has asked for that information. That is the problem with the section. It does not go through the act.

Hon. Mr. Scott: The problem is that if you are going to require, and maybe you want to require, the Provincial Auditor to give notice or someone to give notice on his behalf, in every instance where personal information is disclosed to him in the course of his duty and allow a complaint by the owner of that information, by the person about whom the information is, the auditor is not going to be able to do a very effective job without an elaborate preamble about whether he can look at the information. It seems to me that the virtue of the scheme now is that we allow the Provincial Auditor and the Ombudsman to have access to government information on the basis that they are much like government people.

Ms. Gigantes: I am not hung up about this because I think that even if we took them out of this section, a privacy commissioner or a Provincial Auditor could apply under section 21 to undertake research of the nature you are indicating. Certainly, it would be found to be receiving information in a way that did not constitute an unjustified invasion of personal privacy.

Hon. Mr. Scott: One of the categories of personal information that can be disclosed in breach of the broad prohibition against disclosure is disclosure to the Information and Privacy Commissioner. Of course, there has to be that or the whole thing will not work. I suppose we can ask, "Why are you disclosing it to the Information and Privacy Commissioner and why do you not send notice to everybody that it is being disclosed to him before it is disclosed to him and have somebody else examine whether it should be disclosed to him?"

Ms. Gigantes: I am not worried about it. Do not get angry with me.

Mr. Chairman: That should take care of the unemployment problem among the employers.

Hon. Mr. Scott: This line shows that we are about to create a monster.

Mr. Sterling: There is a significant difference in section 21 as opposed to section 39. Under section 39, there is no notice to the guy whose information is being revealed.

Ms. Gigantes: There may be no notice under section 21 either.

Hon. Mr. Scott: If we had passed Bill 80, we would not have had to do this.

Mr. Sterling: That is right.

Hon. Mr. Scott: Except everybody thought Bill 80 was no good.

Mr. Sterling: I must say that this is not much different from Bill 80 when you get down to the final analysis, except that it is more confusing.

Hon. Mr. Scott: The point is that when we pass the legislation problem, the job will be easier.

Mr. Sterling: What I need under section 39 is strictures on the Provincial Auditor, the Ombudsman, the responsible minister and the Information and Privacy Commissioner on the control of the data those people receive.

Ms. Gigantes: That is in the acts, though, governing each. They are all sworn to privacy upside down and inside out.

Hon. Mr. Scott: Look at clause 39(m), "to the government of Canada in order to facilitate the auditing of shared-cost programs." If you have a medical shared-cost program, what you are envisaging is a situation where before we can give them the data on how many Ontario health insurance plan insured used program X, we have to give every one of those OHIP insured the right to have some kind of privacy hearing before we give the federal government the information.

Ms. Gigantes: No, because they do not have to be identified personally.

Hon. Mr. Scott: I know.

Ms. Gigantes: Then why are you dragging out red herrings? That is not personal information.

Hon. Mr. Scott: Maybe it is not.

Mr. Sterling: I would like some strictures in the act or in this particular section to ensure that the person who is receiving the information is using it for purposes of whatever his function might be. To me it appears a bald statement of a right to access to personal information notwithstanding that he might want to use it for.

Mr. Morin: That is very clear in the Ombudsman Act. The information he receives is strictly for his own use.

Ms. Gigantes: Yes, but what Mr. Sterling is saying is if we said "(j) to the Ombudsman for the purposes of carrying out his duties under the Ombudsman Act."

Mr. Sterling: Right.

Mr. Chairman: This is where we are able to identify the usage under the act. We will not know whether it is proper, improper, well done or not well done, offensive, nonoffensive or whatever. We need to identify and track.

Ms. Gigantes: Let me underline once again my major concern with section 39. It is not one that Mr. Sterling has referred to but I can see his point. It is law enforcement, both domestic and foreign.

Mr. Chairman: Okay. Can we make a stab at going through the rest of it now? Section 40.

Mr. McCann: We have already alluded to sections 40, 41 and 42 to some extent. Section 40 requires that personal information "that is organized or intended to be retrieved" by name or number or that type of symbol be included in the personal information bank. Section 41 requires a directory of personal information banks to be published annually. Section 42 requires retention of records of uses that are not those disclosed in the personal information directory and an ultimate update of the directory, so that the directory should always reflect accurately the actual uses and disclosures that are made of information in various personal information banks.

Sections 43, 44 and 45 can be considered together. They all deal with the individual's right of access to his or her own personal information.

Section 43 also establishes the right to request a correction of personal information and the right to file a statement of disagreement where the correction is not made. Section 44 sets out the procedure for requesting access to one's own personal information. Section 45 provides for exemptions to the individual's right to his or her own information. It incorporates the access-to-information exemptions with the exception of section 21. It also provides for some other exemptions.

Ms. Gigantes: I wonder whether we can go back for a moment to clause 43(2)(c). Could I ask for an estimate of how many times we think corrections and statements of disagreement notices would have to be sent out? Is there any estimate on that?

Mr. McCann: Our information from the federal government is that there have not been a very large number of requests for corrections made by individuals, so it has not yet had to face the problem of a large number. We have no idea how large a number of requests for correction might be made. It is really difficult to estimate at all how many notices under clause (c) might be required. We think it would be a small number but that is a guess.

Ms. Gigantes: If that were the case, it seems to me that to limit the number of people who would receive that information, receive the notice--within the time frame of one year seems unnecessarily short. If it takes me three years to find out that somebody has inaccurate information on me and I want to correct the record, surely I should expect that the government would let people know further back than one year if they received the information.

Mr. Chairman: In other jurisdictions, for example, when you look at this, strangely enough this was not a very active consideration. There were not a lot of people who wanted to correct the record. It seemed to me that most of them who did pursued it pretty aggressively on their own. It was the unusual person who wanted to correct the government record, and then that person very much did it on his own. That person took whatever corrected information and flogged it about to whoever wanted it. I do not think it would be a big problem to extend the time, though, would it?

Hon. Mr. Scott: I suppose that in most cases where a notice has been given, it may simply require increasing the number of notices.

Mr. Chairman: Yes.

Hon. Mr. Scott: As we do not know anything about the experience in it one way or the other, I do not know what we could say.

Mr. Chairman: Any other questions on those sections? Okay. We are at section 45.

Hon. Mr. Scott: We have done section 45.

Mr. Chairman: So we are into the last section.

Ms. Gigantes: No.

Mr. Chairman: Have we not done section 45?

Ms. Gigantes: I have some questions about section 45.

Mr. Chairman: Okay.

Ms. Gigantes: On clause 45(a), when we look through the sections that apply to the disclosure of personal information, I find it very strange that we should include sections 17, 18 and 19. What we are talking about in this information is a minister's or head's refusal to disclose to person X information about person X. Now why have we got roped into that scientific, technical, commercial, financial, labour relations, trade secrets and research information? It seems to me we could well do without sections 17, 18 and 19 in that exemption list.

Hon. Mr. Scott: It is an interesting sort of question. I suppose the most obvious answer is found under section 17. I am not sure how I would answer your question just at the moment with respect to sections 18 or 19, but under section 17 I conceive it is possible that the information relating to labour relations might contain personal information, which it was thought should not be revealed.

Interjection: Like what?

Hon. Mr. Scott: I presume that in conciliation the trade union or the management may make disclosure to the conciliation officer of certain information about the bargaining unit or about the kind of activities management will resort to in the event there is a strike on one side or the other. In conciliation all kinds of stuff gets shipped over the table, and some of that may be personal information. The issue is, should that be disclosed to the person referred to in the personal information? I thought the answer would be no or you would be breaching the whole disclosure, for example, of trade union information.

Mr. Chairman: I must think about that one.

Ms. Gigantes: Yes. Perhaps you could give a more concrete example.

Hon. Mr. Scott: Maybe I should wait and be sure I have a good one.

Mr. Chairman: Yes. Let us not speculate. Take your time.

Ms. Gigantes: Good.

Mr. Chairman: Do you have anything else under those?

Ms. Gigantes: Yes, clause 45(c). It seems to me that kind of exemption is a very broad one. Perhaps we should look to narrowing that. That is indicated by a motion.

Mr. Chairman: All right. Any other? Perhaps we can move on to part IV, the appeal.

Ms. Gigantes: Clause 45(d); again, that word "prejudice."

Mr. Chairman: Yes, you raised that earlier.

Ms. Gigantes: "To prejudice the mental or physical health of the individual."

Mr. Chairman: Right.

Hon. Mr. Scott: I would be delighted to find some other word. I think really it means "disadvantage."

Mr. Chairman: I think she is about to help you with that.

Hon. Mr. Scott: Have you got a word?

Ms. Gigantes: "Endanger"?

Hon. Mr. Scott: "Endanger or disadvantage"? Sure.

Mr. Chairman: Okay. Anything else? Perhaps we could go to part IV.

Ms. Gigantes: Under clause 45(f), why would one want to refuse personal information to a person about himself or herself that was "a research or statistical record"?

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Mr. McCann: I think we are talking here about information that is in an aggregated form for which it would be difficult or impractical to break out the part that related to the particular individual who is making the request. Once that information loses its character as research or statistical and becomes used for some other purpose by the institution, then I do not think the act would have any application and the person would have access. I think it is not placing the onus on the institution to search through aggregated data to find the part of it that deals with the individual who is making the request. I can give you a copy of the Williams commission discussion on it. I am sort of repeating from memory at the moment and not very thoroughly.

Mr. Chairman: You are kind of making the argument that if it is used for research or a statistical record, it is not personal information per se, is that right?

Hon. Mr. Scott: Does the situation not arise this way? I as an individual through the Ministry of Health can say--

Ms. Gigantes: But this defines the use of personal information.

Hon. Mr. Scott: --"I want to know every context in which information about me has been used." They may produce some, but they may also say, "Look, Scott's medical record was used in conjunction with two million other medical records in doing a study of some issue." We should not be required to search out the part that his information played in that overall research project. When your information has gone into a research project, which is--

Ms. Gigantes: But it still exists as a medical record.

Hon. Mr. Scott: The medical record they will get.

Ms. Gigantes: Nothing happens to it in a research project, it still exists.

Hon. Mr. Scott: Sure. It becomes merged with the other people's material. If it exists independently of a research or statistical record, I take it it will then be produced as independently existing, but if it exists as part of a research record, the question is, should you have to unpack the research record to get at it?

I envisage that some people will write to a ministry and say, "I want to have every piece of personal information you have on me and any context in which you are using it." I do not blame them; that is a fair question that people will ask. The question here is, should they be allowed to ask about how their personal information has been used in a research record?

Ms. Gigantes: Let me pose to you the interesting question that arose in Sweden in the last year. It came to light that there had been a long-term study of people's sociological behaviour. I cannot remember the question they were after, but it had something to do with their likelihood to find work and qualify for welfare.

Hon. Mr. Scott: Socialists are always doing that.

Ms. Gigantes: What they were doing in this research project went against every word in their personal privacy protection stuff.

Hon. Mr. Scott: You can never trust them.

Ms. Gigantes: Then how would we find out if such a thing was happening in Ontario?

Hon. Mr. Scott: You would examine the minister at estimates to find out what research projects he has undertaken--

Mr. Martel: Are you kidding?

Hon. Mr. Scott: This very same member chilled me about that issue only a month ago.

Ms. Gigantes: Should I not be able to ask the question of the government as to what research purposes has my personal information been put?

Hon. Mr. Scott: Certainly.

Ms. Gigantes: Would I be disqualified from finding that out under clause 45(f)?

Hon. Mr. Scott: I think the answer has been given. The question is whether you should be able--you would not be able to find it out under clause 45(f) anyway. What you would be able to find out--

Ms. Gigantes: That would prevent me from finding out.

Hon. Mr. Scott: No. Even if clause 45(f) was not there, you would not be able to find it out. The issue is, should you be able to ask into what research projects, which are permissible and which do not breach the act, information about you has gone and what precise information about you has been put into those research projects? If you really think that is necessary, you will want an amendment to section 45.

Ms. Gigantes: Clause 45(f). Thank you.

Hon. Mr. Scott: If we take a Gallup poll and phone your number, Mr. Chairman, then you are really up the creek, are you not?

Mr. Chairman: You are.

Hon. Mr. Scott: On two counts.

Ms. Gigantes: I think we should have longer for an appeal on subsection 46(2).

Mr. McCann: Section 46, really part IV, deals with the appeal to the information and privacy commissioner. Section 46 says a person who has made a request for access or correction or a person who has notice, a third party, may appeal any decision of a head under the act to the commissioner within 30 days.

Ms. Gigantes: What if you are out of the country? If you go on vacation, do you miss your appeal period?

Hon. Mr. Scott: You do, and there are 100 statutes which make plain that if you are going to be in litigation, you should not take too many vacations.

Ms. Gigantes: You are not supposed to be in litigation under this legislation, are you?

Hon. Mr. Scott: In the other legislation we do not have a special rule for your vacations, and maybe we should. I think it is worth considering.

Ms. Gigantes: We could start here.

Mr. McCann: Section 47 says the commissioner may authorize a mediator to try to effect a settlement of the matter. Section 48 deals with the procedure on an appeal.

Ms. Gigantes: Could I ask why, under subsection 48(5), the commissioner would not be allowed to retain a photocopy of a record? Does he have to do all his work on a particular case in the offices of the ministry he is inquiring into?

Hon. Mr. Scott: No, it is not intended to achieve that. If I understand it right, it is desired to ensure that following the completion of a process he will not retain a record. That is, a confidential record that should not be disclosed out of a ministry will not, after the process is completed and when confidentiality is guaranteed, now have an independent life in the commissioner's office.

Ms. Gigantes: Then I think we had better say that under subsection 48(5).

Mr. McCann: Section 49 provides that the burden of proof that a record or part of a record falls within an exemption is on the head of the institution.

We have already discussed section 50 to some extent. Subsection 1 says the commissioner can make an order at the end of the day disposing of the issues raised by the appeal. Subsection 1a says the commissioner shall not order the head to disclose where the commissioner has upheld the decision of the head. The rest I think is self-evident.

Subsection 51(1) is interesting because it is a confidentiality provision binding on the commissioner which--

Ms. Gigantes: If I could just indicate on 50(1a), I think we are going to have a lot of dispute around that one.

Hon. Mr. Scott: I know it is late in the day, but let me see if I

can try, as I was trying when I was thinking about it at lunch, to make plain what we are trying to talk about here. There are a number of sections that say, "The head may refuse to disclose." If you turned all those into, "The head shall refuse to disclose," then there would be no discretion in the head. Once he determined it was solicitor-and-client information, he would be obliged to exempt it from disclosure.

What we are trying to do in those sections is to give the head a discretion, if he wants to use it, so he can say: "Look, this information is all solicitor-and-client information, but it is 25 years old. I am not going to insist on refusing to disclose it, even though I could. I am going to let it out. I may."

The issue is whether you want the head to have that additional power in a political, discretionary way to waive a right he could rely on. I think you do. As minister, for example, I will not want to disclose solicitor-and-client information relating to a case two days ago, but I will be quite prepared to do so with respect to cases that are 15 years old. So you want to say "may."

If you are going to give him that additional right, the next issue is whether you want to give the same right to the commissioner. Our judgement was that what the head was saying is, "I am not going to rely on my rights." That is why you have subsection 50(1a).

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Ms. Gigantes: The head, under this legislation, subsection 13(3), would have to disclose that record because it is more than 20 years old to start with.

Hon. Mr. Scott: Let us take one 15 years old.

Ms. Gigantes: We are going to move to 10.

Mr. Chairman: Let us not argue it now. Let the staff continue to run through the act.

Ms. Gigantes: I just want to indicate that as far as I am concerned that constitutes a real problem and we have amendments addressed to it.

Mr. McCann: Sections 51 and 52 are various provisions relating to the commissioner. Part V is a general part dealing with a number of matters to round off the legislation. Section 53 deals with the provision of costs. Charges can be made for certain aspects of obtaining and preparing a record for disclosure. Where those costs are going to be over \$25, the requester has to be provided with an estimate beforehand. The payment may be waived in certain cases. The fee is subject to review by the commissioner.

Section 54 requires the commissioner to make an annual--

Ms. Gigantes: Under subsection 53(c), if you have online personal information, how much does it cost to dig out at the request of Mr. X his personal information, how much does it cost to have the computer do a run and locate and retrieve and process a copy?

Hon. Mr. Scott: I think the answer to that depends on whether it is computerized and the extent to which that information may be required to be produced. For example--

Ms. Gigantes: Subsection 53(c) deals with computer and other costs.

Hon. Mr. Scott: Oh, I am sorry, but if for example the information is the utilization of a person's name as part of a research project or study, it may be very time-consuming and expensive to unpack that study.

Ms. Gigantes: If it is normal?

Mr. McCann: The computer costs may be very low in some cases if it is a matter of punching in certain entry data and getting the information up on the screen.

Ms. Gigantes: Would it be comparable to licence information?

Mr. McCann: Motor vehicle licences?

Ms. Gigantes: Yes.

Mr. McCann: In some cases it would be. It depends on the nature of the information. I am not an expert in the field, but I gather it is stored in different ways and access is by different means and it depends on a number of factors.

Certain personal information would not be expensive to access, though, and not lengthy in terms of the number of pages it would occupy in print; so the cost would be very low in those circumstances.

Ms. Gigantes: Under \$25?

Mr. McCann: Probably. Section 54 requires the commissioner to make an annual report to the Speaker of the Assembly.

Section 55 deals with some general or additional powers of the commissioner.

Ms. Gigantes: On subsection 53(3), I think there is a mistake. Clause 53(3)(a) refers to "the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1)." There is nothing required under subsection (1); a head "may."

Hon. Mr. Scott: "A head may require...."

Ms. Gigantes: Yes, but it is not required by subsection 1.

Hon. Mr. Scott: Once he does, it is required under subsection 1, and once he has done that, then he may waive that, based on the criteria found in subsection 3.

Ms. Gigantes: So it is required by the head.

Hon. Mr. Scott: The information is, yes.

Mr. McCann: Yes, information that is proposed to be required by the head, I think.

Section 55 gives certain powers to the commissioner: the power to offer comment on privacy protection; the power to order destruction of collections of personal information and so on.

Section 56 is a regulation-making power. Most of the heads of that regulation-making power have been picked up in other sections where they are relevant. I think at least some of them have been discussed there.

Section 57 creates certain offences.

Ms. Gigantes: Could I ask a question about clause 56(c)? I wonder if you could explain 56(c).

Mr. McCann: "Prescribing the circumstances under which records capable of being produced from machine readable records are not included in the definition of 'record' for the purposes of this act."

I think it ties into the reference in clause (b) of the definition of the word "record," which talks about machine-readable records and is made subject to the regulations. I think this is the regulation-making power that picks up that reference to "subject to the regulations" in clause (b) of the definition.

Ms. Gigantes: Which means?

Hon. Mr. Scott: Which means that, under clause (b) of record, the records that are capable of being produced from a machine are going to be defined by the regulations.

Ms. Gigantes: What ones would you leave out?

Hon. Mr. Scott: That will be for the regulations to decide.

Ms. Gigantes: Could you give us a hint?

Hon. Mr. Scott: I have no idea.

Ms. Gigantes: You must have put it in for some reason.

Hon. Mr. Scott: Let us assume you had an absolutely massive record.

Ms. Gigantes: A machine-readable absolutely massive record?

Hon. Mr. Scott: Yes.

Ms. Gigantes: That you decide you are going to exclude?

Mr. McCann: Someone may want specific data chosen from a large data bank, for example, the motor vehicle data bank--that may not be a good example, but a large data bank in any event--someone who wanted to know all the people who had blue eyes and brown hair or something. In some circumstances at least, that could be an enormously expensive and difficult task.

Hon. Mr. Scott: It could shut down the operation of the motor vehicle bureau for a month.

Mr. McCann: It could hamper the normal processing that data bank would otherwise be undertaking.

Mr. Chairman: Who would notice this?

Hon. Mr. Scott: In some ministries it might not be noticeable, but

for example, we have to understand that, under this system, there is no reason someone cannot come along and say, "I want to know how many people there are in Ontario, and where they are physically located, who have motor vehicle licences and blue eyes." We can retrieve that information physically, at considerable cost, but to do so would mean that computer is going to be out of operation for a month, so you simply declare it not to be a record.

Ms. Gigantes: Could you remind me which section says a request shall be served unless it is going to upset a whole office and stop an operation and so on? I think it is in part II. There is a section which already deals with that.

Mr. McCann: Uhm--

Hon. Mr. Scott: You are supposed to be the master of this statute, remember?

Mr. McCann: The only one I am aware of is that clause (b) of the definition of record talks about "hardware and software or any other information storage equipment and technical expertise normally used by the institution," though the definition itself does not require application of unusual technology.

Ms. Gigantes: There is a section in the bill which talks about the reasonable guidelines for the production of information. I just cannot put my hand on it now.

Mr. Chairman: Is there anything else anyone wants to raise under this item? Shall we now proceed?

Hon. Mr. Scott: I take it is under 24(1), where it says, "detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record," but I think that is something different.

Ms. Gigantes: Yes, it is.

Hon. Mr. Scott: The record here could be easily identified.

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Ms. Gigantes: Yes. It seems to me that section could be written so we understand what it is going to mean in practice and in the regulations. It is just going to throw a spanner in the works.

Mr. Chairman: I think what it means is that there is no intention here to shut down an entire ministry to answer somebody's request for information.

Ms. Gigantes: Something like that. That is a good beginning.

Hon. Mr. Scott: Apart from our seasonal shutdown.

Mr. Chairman: Or the occasional failing lapse.

Mr. McCann: Section 58 allows the head to delegate in writing the powers or duties of the head. It also protects individual institution employees from actions for damages in certain circumstances, but their employer--the crown, or in some cases, institutions which would not at law be

part of the crown--is not protected from liability, so I think the result is you can sue the institution or the crown for the defaults of its employees.

Ms. Gigantes: If I could just backstep for a moment, to subsection 58a(2).

Mr. Chairman: There is a need to pick one of our official languages and write this act in that language. I do not know which language you have used in this clause.

Ms. Gigantes: The word "immediately."

Hon. Mr. Scott: I think the problem is not with the language; it is with the concept. Are you looking at subsection 58a(2)?

Ms. Gigantes: Yes. I have no trouble with the concept, but I am hung up on the word "immediately," because what has happened in recent times--I do not know if you are aware of it--is that we have been refused information that previously we expected to have available to us on the grounds that it did not fit under freedom of information, so the immediate practice we are going through is not very good.

Hon. Mr. Scott: But if the immediate practice is to exclude the information, you will then get it under the Freedom of Information and Protection of Privacy Act. What this says is, if it was immediately available, your right to it is preserved, notwithstanding the Freedom of Information and Protection of Privacy Act.

Ms. Gigantes: But suppose it had been available two years ago, but now, because we have an act coming in, people are saying: "No, under the act we can deny you that information. We are going to deny you that information now." Then you are telling me, "Go get it under access to information," which defeats the purpose of this clause.

Hon. Mr. Scott: I think you have it backwards.

Mr. Chairman: She is learning to speak the language.

Hon. Mr. Scott: She is learning to deal with the concepts, and I think the concept is designed to assure that if it was available immediately before the introduction of the act, it will continue to be available, notwithstanding what the act provides. If it was not available immediately before the introduction of the act, it then becomes available and subject to the rules of the act.

Ms. Gigantes: Is that three weeks, three months or three years? What is "immediately"?

Mr. Chairman: In the fullness of time?

Mr. McCann: I think also the words "custom or practice" are important. It takes some time to develop a custom or practice, so the fact that, two weeks before the act came into force, something had been refused would probably not constitute a custom or practice. The commissioner or a court would look to a longer stretch of time to see what in fact the custom or practice was.

Ms. Gigantes: They would have more power to make a good decision if

the word "immediately" were not there.

Mr. McCann: Subsection 59(1) says, "This act does not impose any limitation on the information otherwise available by law to a party to litigation."

I think the primary effect of that is that if you are litigating against the crown, you get what you get according to the law of evidence and the rules of discovery. You are not bound by this act. At the same time, the act does not affect the power of a court or tribunal to compel testimony.

Section 59a deals with certain records to which the act does not apply--private records in the Archives of Ontario and certain psychiatric records which, I think, are now dealt with by amendments to the Mental Health Act, which has its own access-to-information system.

Section 60 deals with confidentiality provisions. This committee will in fact have the responsibility to review confidentiality provisions and make recommendations for repeal, reconciliation with this act and so forth.

Section 61 says that this committee within three years will undertake a comprehensive review of the act.

Ms. Gigantes: Could I ask about subsection 60(3)? In essence, subsection 60(3) says that this act does not overtake other acts until two years from now.

Hon. Mr. Scott: Subsection 60(3)?

Ms. Gigantes: Yes.

Mr. McCann: That is right. Yes. Subsection 2 says that this act prevails over the confidentiality provisions. Subsection 3 says that provision does not come into force for two years. Subsection 1 sort of completes it by saying that the committee is to undertake a review of those provisions. So, I guess if the review is completed and the changes have been made, then some of those provisions might say that they prevail notwithstanding the freedom of information act, but those which had not been amended would be prevailed over by the freedom of information act at the end of that.

Ms. Gigantes: Does that really mean we do not have confidence to apply the principles in this legislation until we have had a full look at all the legislation to see what confidentiality provisions there are?

Hon. Mr. Scott: I think it does not mean that. I think it means that we are saying that the confidentiality provisions, and therefore the disclosure provisions, of this act apply, but we are setting aside two years in order to look at the provisions in any particular statute. In other words, the Legislature having decided in a particular statute that there will be certain confidentiality provisions, that legislative determination will be overridden by this act, but not for two years.

Ms. Gigantes: Have you got a count of how many acts would be affected?

Interjection: Over 100.

Mr. McCann: Not an exact count, but there are quite a few.

Mr. Chairman: We will require a considerable study.

Mr. Sterling: I think it should be reversed. The individual acts should be paramount to this particular act in confidentiality provisions, because when you deal with an adoption issue, I do not know how you can deal with it under this particular law. That is a problem that I have.

Hon. Mr. Scott: That is an example. I think section 60 is an effort, really, to allow us a window to examine how the two mesh together.

Mr. Chairman: Okay. Is there anything else you want to throw in there? We have gone through the walk-through. We will adjourn now and come back tomorrow at 10. I would reiterate my plea to you. If you have an amendment that you want to put to this bill, give us a copy of it as soon as you can.

We stand adjourned until 10 tomorrow.

The committee adjourned at 4:50 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

TUESDAY, MARCH 24, 1987

Morning Sitting



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Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

ERRATUM: The inside covers of issues M-67 and M-68 should indicate:

Also Taking Part:

Gigantes, E. (Ottawa Centre NDP)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, March 24, 1987

The committee met at 10:10 a.m. in room 230.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: I think we are ready. In terms of how to proceed, I am going to seek a little direction from you. I will summarize what we have tried to do. We have tried to provide the opportunity for any member to present any amendment he wants. We have put those in a binder. If luck is with us, the binder represents the amendments as they will come up in the processing of the bill.

Because of some scheduling problems we have had with various critics and other folks, we have tried to get an agreement that if there are any controversial, big vote items, we will set those aside and rather move through the bill by consensus. We will have one runthrough to see how things will fit. As many people have pointed out, if you change one section of this sucker, it often results in a dozen other amendments on the way through. Perhaps the most expeditious way to do this is to try to do a runthrough to see where we have consensus. At that end of that process, at least you will know, if you have an amendment, whether it is likely to carry and whether subsequent amendments will be necessary. .

Specifically, I do not want to spend a whole lot of time on amendments that are going nowhere. I would hope that most of you would appreciate that. If you really want to do so, you have the right to place any amendment you see fit, but I am trying to give you kind of a straw vote on the way through to get some indication of what will gather enough support to stand as part of the bill and what will not. By the time we take our second runthrough, that should be a rather quick, informal exercise where actual votes are taken.

The premise is that we will go through the bill. You can try anything on for size that you want. I will try to see whether there is consensus on it, so we will know whether the amendment might carry. If it does not, I cannot prevent you from moving amendments. Of course, you may have some great philosophical point you want to make in doing so and you will have your chance to do that.

Let us not argue the thing 95 times. Let us go through it once and see what fits. If it fits, when it comes to the time when we go through for the actual votes, you will have an opportunity to move an amendment. I hope there will be ample opportunity to make adjustments on the way through, so if there is, for example, an obvious consensus in the committee that a word will be changed and that means it gets changed five times, the government will accept that. That will expedite the business.

Mr. Martel: It might be easier if the minister told us what he is prepared to accept.

Mr. Chairman: I am sure he will. He is a very accommodating fellow, congenial to the extreme, friendly, amenable, warm, loving, kind; all those things.

Mr. Warner: Do not get carried away.

Hon. Mr. Scott: If it is of any help, I have some difficulty with the amendments the New Democratic Party proposes with respect to law enforcement. It seems to me they are inconsistent with the Carlton Williams report and will produce a very different bill.

The Carlton Williams report recognized that information collecting was a part of policing and that policing was not restricted simply to the investigation of precisely identified crimes. I am afraid the amendments the NDP proposes not only will fundamentally alter the bill, but also will fundamentally alter in a negative way the nature of policing in the province. I have some difficulty with those.

The Conservatives have a proposal with respect to dividing the office of commissioner into two parts, on the Ottawa model, where there is a Privacy Commissioner of Canada and an Information Commissioner of Canada. I will be interested to hear the debate on that subject. I am not certain that following the Ottawa model has much to recommend it as a matter of principle, and I am not certain that a doubling of the bureaucratic staffing is going to advance the interests of the citizen and those who seek information, but I will be interested in the issue there.

There is another proposal of a fundamental type from the New Democratic Party, to extend the bill to municipalities. I will be interested to hear the debate on that, but frankly, our position is that this is a bill for our government, not a bill for other organizations, and that we should not at present not extend the bill to municipalities.

If you were to extend the bill to municipalities, there would be the difficulty that the present bill would not work for municipalities because municipal organizations are fundamentally different in structure and deal with different kinds of issues. If you were to extend it to municipalities, it seems to me you would have to add about 30 sections developing a way in which it would work in those municipalities to which you extended it.

I think those will give the committee some sense of where we are on some of the major issues that the committee will want to confront.

Mr. Chairman: Before I forget, I have had a request from the Attorney General. He would like to be able to attend a funeral this afternoon. It seems to me that we could accommodate that rather easily by starting at three and going through until five, rather than starting at two, if it is agreeable to the committee. We would normally extend that courtesy to anybody. Unless there is a problem for someone, we will start this afternoon at three and stop at five. All right?

Second, it seems to me that some of these fundamental larger items have to be decided before a raft of amendments is put. It might be useful to entertain a bit of general discussion this morning before we begin this process, on, for example, those three items as starter points and anything

else that anyone has that he considers to be a major item. The reason I am prepared to do this is that, quite frankly, it seems to me it would be faster and would make more sense to see where the committee lies on these matters in advance of putting a whole lot of amendments that might support that argument.

In other words, if the committee as a whole is supportive of the idea that law enforcement agencies will be dealt with in a slightly different way, or have to be, then there is not a whole lot of sense putting amendments that are not going to carry. If we can get some sense of direction from the committee for starters, that will assist people in placing amendments.

The Attorney General has offered three areas for discussion that are pretty fundamental.

Hon. Mr. Scott: Could I add two?

Mr. Chairman: Yes. Law enforcement, the inclusion of other agencies or municipalities, or in general, expansion of the bill, and any other items that members want to get on the agenda this morning. It seems to me it would be useful to get some discussion around that before we go through it. You had a couple of other items you wanted to put in?

Hon. Mr. Scott: Yes. Another issue that is of general interest to members, as their amendments indicate, is what we are going to do with cabinet documents. It might be that cabinet documents would be an issue about which the committee would like to have a general discussion as we move into the amendments.

There is another proposal that the NDP makes that is of very great interest, which is the proposal that there be a public interest override with respect to every appeal determination. It essentially comes down to this: The commissioner should not be bound by the categories established in the act, but should have a general power either to prevent it going out or to permit it to go out. That raises a general question that should be addressed.

The last general question, a third, to be added to the list is, what should be done about a proposed appeal from the commissioner? As you know, there is judicial review of the commissioner's decision by the court, by virtue of the Judicial Review Procedure Act. There is an amendment that contemplates a full and open appeal on the merits to a judge of every decision taken by the commissioner.

Mr. Morin: Would there not also be an appeal to the Ombudsman, because it is a commission, considered as a quasi-judicial body such as the Ontario Municipal Board and the Ontario Human Rights Commission?

1020

Hon. Mr. Scott: I think the answer to that is no, by virtue of subsection 46(4), "The Ombudsman Act does not apply in respect of a complaint for which an appeal is provided under this act."

Mr. Chairman: You would have to go to the courts; you could not go to the Ombudsman.

Mr. Morin: It is going to be challenged in court.

Mr. Chairman: Are there any other matters that anyone wants to get

on the agenda this morning? Frankly, I think that if we get through this short agenda this morning, it will assist us greatly in putting amendments. Again, to reiterate, I cannot stop anybody from moving amendments. What I am trying to do is to set it up so that you know whether an amendment is likely to carry, and I am asking you not to waste a whole lot of time on amendments that are not going to go anywhere. I cannot prevent that. I am just looking for a little help here. Are there any comments on any of those matters?

Mr. Martel: I want to comment on what my friend said about the police one. I think our concern was not as much about gathering the information, because I do not think anyone wants to hamper investigation; I think our concern was primarily with subsection 37(2) and part of subsection 37(3), the dissemination of that information. The minister played around with that yesterday and made the same statement. In a kidding fashion, I said his rhetoric was what was carrying the day, and nothing else. It was not substance because he put an interpretation on it that I do not think we put yesterday.

I think we were worried about subsection 37(2) and clause 37(3)(b) in particular. I do not think any of us is interested in hampering an investigation. What we are concerned about, though, is the passing on of information when one knows it is not reliable, and you say it in there, "may not be reliable." There is a difference between gathering the information, which is going to help, I think, and what you are going to pass on to whom. That was the thrust of part of the concern in subsection 37(2).

Hon. Mr. Scott: Perhaps I can give my friend an example of the concern I have, and it is one that can be duplicated 100 times. The police provide a security service. They provide, for example, security for the Premier, the leaders of the opposition and the Speaker of the House. In doing this, they receive information, much of which is accurate, much of which may not be accurate but which they catalogue and use in making decisions about how those people can be protected.

The reality is that if you are obliged to release in a public way the information you collect, that has an inhibiting effect on its very collection. People will not give it to you, and you will not take it if you are going to have to release it. For example, if you look at a security system, which is what the police are, it goes without saying that as part of their obligation to protect members of the House and the Premier, the police deliberately collect a lot of information that turns out to be false.

I fear these amendments are going to inhibit that exercise, because people will not want to volunteer information if it is going to get to be public. The police will not want to collect it if they are going to have to make it public, or if they are going to have to represent that it is reasonably accurate, because they cannot do that. The question is, how can you run systems like that by imposing on them a freedom-of-information system?

Mr. Warner: I want to make sure I am clear about this. We do not wish to inhibit the giving of false or inaccurate information. Is that what we are attempting to secure, that we can continue to collect false and inaccurate information?

Hon. Mr. Scott: Your colleague the member for Ottawa Centre (Ms. Gigantes) does. We had that debate yesterday. She says we should not be able to collect information--that is, preserve it--unless it is reasonably accurate.

Mr. Warner: I am not sure she quite said that.

Mr. Chairman: I think the centre of the argument is essentially this: There is a question of whether you have to verify the accuracy of information before you are allowed to collate it. The practical problem is that if you knew it was accurate and could document that, you would probably be charging somebody somewhat. It is kind of advance information on how you would collect that and whether you would transmit that. How you would record it is the difficult question.

What we have seen in other jurisdictions, for example, is that if you choose to shut that down totally, you set up two systems of record-keeping, one of which is a formal system to which people can apply and get that piece of paper, and the other is an informal system where police officers will not write down the information but they will transmit it. You do not stop the information flow. What you create is a formal system of recording information and an informal one. Whether that is desirable or not is a good question.

The other point that I want to put on the table this morning is a simple reminder that this is one of the few bills that I have seen that says, "Here is a bill and this bill will be reviewed in a three-year period." It is not as if you are never going to get another chance to do it. You may, in the course of your deliberations, decide that here is a matter that we want to monitor closely. My advice to you would be to try to make sure that there are sufficient provisions in the bill for monitoring, so that in two or three years, you can track what the results of the bill have been as we finalize it, and make your decisions.

If you have some apprehension that some section of the bill is not very workable, my advice to you would be to make sure that you are able to track whether that thing actually did work. In two or three years, when you review those provisions, you will be able to do it.

You have a bit of a backup on this in terms of being able to follow up on it. It had occurred to me, for example, when people talked about expanding the scope of the bill to other agencies, municipalities or whatever you might want to put in there, that one simple way to identify some problems is simply to give notice that in the second review of the bill, it is probable that we will expand this to all government agencies or a larger list of agencies and municipalities. You have three years to work out the details of how freedom of information and protection of privacy might apply to you.

For example, with municipalities, there is the Association of Municipalities of Ontario, a large organization quite prepared and set to do that kind of work. You could say to it: "In three years, you will be included under similar legislation. Take the three years and give us your recommendations as to how this should be implemented at the municipal level." You may not want to do that, but that option is open to you in this instance that, frankly, would not be there in other ones. Perhaps you could be mindful of that.

Mr. Sterling: I am not going into any of the six specific issues the Attorney General (Mr. Scott) raises. One of the problems with talking about an issue in generality is that a lot hinges on the particular sections you are talking about. The wording is so important in this piece of legislation. It is difficult, in some instances, to decide which way you are going to swing on it unless you are talking about the actual sections. If the Attorney General, for instance, wants to talk about law enforcement, is he talking about the

exemption sections or about section 39 or whatever, if he wants to start on that one?

Hon. Mr. Scott: I was talking about the law enforcement definition, subsection 2(1). The New Democratic Party proposal is to remove policing from law enforcement.

Mr. Sterling: Well, it will not gain our support for that.

Hon. Mr. Scott: No.

Mr. Sterling: I guess what you have to do is to go through it in that vein as to where the problems lie. It is difficult to talk about these things in general terms.

Mr. Chairman: No, but for example, it is useful for us to know that there is not a lot of support for some differentiation around law enforcement provisions, whether they are definitions, exemptions or whatever. It tells, for example, one political party that you are free to move all these amendments, but if it is not going to get support within the committee, perhaps the amendments could be moved in 10 minutes to make a point rather than in eight hours to gain votes. Frankly, that would be quite useful to us.

The other area I would like to entertain some discussion on is the matter of whether there would be two commissioners, as the federal model has it, or two deputy commissioners and a commissioner. I would like to get some indication from the committee as to where the support lies on that concept.

1030

Mr. Sterling: Perhaps you would like me to talk about it first, because there will be an amendment put forward under section 4 of the act, where you are setting out the different offices.

I have had considerable discussions with John Grace, the privacy commissioner for Canada, and with a number of other people who have been involved with privacy matters. One of the conundrums that anyone faces in creating a freedom-of-information act is that the balancing offset is the privacy aspect of the individuals and corporations and society's institutions that are dealing with government.

They are two absolutely opposing principles you are dealing with. I am of the opinion that, in the complex society we have in Ontario, we need somebody out there to represent the privacy interests of the citizens. I would not limit the function of the privacy commissioner to the narrow confines of what this act does. I would like the privacy commissioner to be preaching privacy concerns not only to government but also to private industry across this province. The federal act does not give the privacy commissioner the scope or mandate to undertake that kind of role, but that is the extension of creating a different privacy legislation and an information commissioner.

The other fact of the matter is that this act does provide for a third party to receive notice of the fact that somebody is seeking information about him or her through the government. To whom does that particular individual turn if he does not want to hire a lawyer? He is what you might call an innocent third party to the procedure. In 99.9 per cent of the cases, he has given the government some information about himself with no trouble at all. All of a sudden he gets a notice from the information commissioner that

somebody wants to find out something about him. To whom does he go to protect his interest?

I think it is rather contradictory that he goes to the information commissioner to protect him from the information commissioner. For that very reason alone, I think there is good reason to have a privacy commissioner operating independently from the information commissioner. The information commissioner is still going to make the final decision under the act, but the privacy commissioner should be there to represent those individuals who are called upon to react to an access situation.

I also think the privacy commissioner could have some role during the legislative process, to advise members of this Legislature as to the various issues involved with privacy in dealing with legislation before this Legislature. In my view, we do not often deal with that in as comprehensive a manner as we should.

We heard yesterday there are over 100 acts with confidentiality provisions that are already in place in this province. This committee or other committees will be dealing with each and every one of those acts. I think it would be very helpful to have a privacy commissioner give us advice on those acts as well when we are reviewing them. I know it is something I had in Bill 80, that they were both one and the same persons.

I do not think it is necessarily building any more expense by having two offices instead of one. It does not necessarily mean a larger bureaucracy or whatever. They could each have three people working for them, or you can have one person with five people working for him. After talking with John Grace at some length and with a number of other people such as Professor Flaherty and other privacy advocates, I think it is something that has to be taken care of in the act one way or the other.

Mr. Chairman: Any other comments on this specific point?

Mr. Martel: I am not wedded to any particular thing yet. I have to be convinced. I thought if you had a commissioner and two department heads, one might find that is equally as good, as long as they have some power to do their business. Somebody is going to have to make the final decision in all instances anyway, and I think you are going to have some conflict between two heads if they have equal power except in the final decision-making. In my opinion, it would be a state of constant war between the two of them. I could be wrong. You might get two people who can do it, but I doubt that very much.

I agree with my friend that the one side has to have a role that is pretty definitive and gives them a fair amount of latitude in doing what they are doing. I am not sure how one gets around the conflict between two different heads, because one is still ultimately responsible for making the final decision. I am not sure you can get consensus on some issues. It might leave it in a state of war.

Mr. Chairman: Mr. Sterling, when you discussed it a minute or so ago, were you not insisting there be two equal persons, one a privacy advocate and one a freedom-of-information advocate? Is that your position?

Mr. Sterling: What I am saying is that there is a privacy commissioner and there is an information commissioner. The duties of the two would be somewhat different.

Mr. Chairman: Are you insisting that it be along the lines of the federal government of Canada model?

Mr. Sterling: Yes, that is right.

Mr. Chairman: So you are advocating two people of roughly equal status?

Mr. Sterling: They are not of equal status, in fact.

Mr. Chairman: No, but roughly. In the eyes of the public, they would see that one advocates privacy and one advocates freedom of information.

Mr. Sterling: That is right.

Hon. Mr. Scott: Can I make this observation? It seems to me there are two people who favour this division. One is Professor Flaherty, who recommended it to the federal government, and the other is John Grace, who got the job. In other jurisdictions, the model has not been followed.

There is something to consider here, but if you create a privacy commissioner, the issue you have is that you have an act here in which every section calls for a decision to be made. Who is going to make those decisions? I take it the privacy commissioner is not going to make any of those decisions; they are all going to be made by the freedom-of-information commissioner.

Then you say, what is the privacy commissioner going to be doing if he is not going to be making any of the decisions under the act? There will be no appeal from him. The decisions are going to be made by somebody else. I presume he is going to be something of an advocate and to help maintain a balance.

It seems to me that a freedom-of-information commissioner will want to have in his bureaucracy a person in charge of privacy. That purpose will be reserved, because one of his two deputies will be on the privacy side and will be fighting to assert privacy.

If it is advocacy for consumers, it seems to me a much more effective way to build in that advocacy is by doing the kind of thing we are looking at in a whole range of public services, providing advocate services, not legal aid, to consumer groups, as we are hoping to do in the health field. Then people who need help in advancing their privacy concerns will have skilled people available to assist them. But to create two commissioners is going to invite us to decide who is going to decide what under this act. It is going to be tough at this stage.

Mr. Chairman: I think we have a sense of where we are on that. Maybe it would be helpful if I put questions to you. Is there an urgency to expand this bill to cover other agencies and municipalities, or is there a consensus that it would be sufficient to give notice that, in the next round, that is very likely to happen or it will happen?

Mr. Morin: We are discussing it now.

Mr. Chairman: Can I get a little feedback here on the record?

Ms. Caplan: It is my view that it would be premature at this time to do anything other than, say, discuss during the three years. I think what you are going to want is an opportunity to look at this bill and see how effective it is. If the decision is made at that time that it is working well and effectively, then certainly the intent to look at that at the time of review would be as strong as the committee should go at this time. To say now that we would definitely include in three years would be sending out a signal which may or may not happen and which would be too strong.

Mr. Chairman: The only problem I have with being a little loose about this is that I am really reluctant to turn loose the idea on, for example, the Association of Municipalities of Ontario, if we have not at least made a commitment in principle that it is our intention in the next round to bring in municipalities.

In other words, I think a lot of work has to be done if municipal governments are to be brought into some kind of freedom-of-information act. I am reluctant to begin that process if we are not giving them a clear message that within three years they will be brought in. I am a little reluctant to say they might be. I am not sure how they would receive that.

Ms. Caplan: To follow that, I would just look at that with the same kind of definitions as the Attorney General (Mr. Scott) yesterday used with "may" and "shall." "May" can be a fairly strong word, and if we use "may," that is sending out a signal which says, "Start to take a look at this act and what the implications might be, so that when the committee discusses this in three years, you will be prepared to discuss it with us." If we use the word "shall," we are pre-empting what will happen three years down the road, and I think that would be inappropriate at this time.

Mr. Warner: Okay, I do not want to get back into the may-shall argument. We have been through that one too many times around here.

Interjection.

Mr. Warner: No, but in other existences. Before I come at this thing, I want to look for a little information. The former government had a bill, Bill 80, I think. I cannot remember. How long ago was that, Norm?

Mr. Sterling: May 1984.

Mr. Warner: Prior to that, there was some other piece of legislation on freedom of information, no?

Mr. Chairman: No, there were discussion papers and things of that nature.

Mr. Martel: There were 100 discussion papers, 10 years of discussion papers.

Mr. Chairman: Just like our study.

Mr. Warner: Did yours include municipalities?

Mr. Sterling: No.

Mr. Warner: I understand what is being suggested here: "Let us postpone the involvement and just deal with an isolated area. Let us not

extend it to all the public areas, but plan this along the way." That is the way most governments operate, in tiny, incremental steps.

It may be a bit unreal to think that municipalities have not had some thought prior to today that they may or should be included in freedom-of-information legislation. I suspect that, either through the bill introduced by our friend Mr. Sterling or the discussion papers advanced by the government prior to that, municipalities had some idea that at some point in time they would indeed be included.

We now want to give them another extension, extend it, we understand, at least three years from whenever this bill becomes law. I really wonder if that is a reasonable thing to do.

Mr. Chairman: I think Mr. Warner is right that there is no question, for example, that municipal governments around Ontario have been aware that, one way or the other, some provision for freedom of information is going to hit them. It may come through individual cases before the courts or it may come through general legislation of this nature, but they have known for a long time that, one way or another, this is going to happen.

Most of them have responded to that. Some have not, but most have made some kind of procedural bylaw in their own municipality that provides for the release of documents of a council, notices of a meeting, agendas or things like that. I think it is fair to say they have had ample notice that something is going to happen.

The question for this committee to resolve is, how clear a message do you want to give them? My advice would be to make it as clear as you can. If you think it is pretty likely that they will be included in the next review of the act, you would be better off to tell them that now and let them prepare accordingly. If you think that is not going to happen, say so as well. You should try to get your message to them as clearly as possible, because many of us who have come out of municipal councils know this is not going to be an easy application.

It is going to require some adjusting in the larger municipalities where their paper flow is probably as big as many of the ministries here. It is going to be a lot of work and expense. In the small rural municipalities, it is going to have to be adopted accordingly. It will not be an easy application, but it is something they have thought about for some time.

Are there any further comments on that kind of a thing?

Mr. Morin: Instead of "may" or "shall," why not say, "will consider"?

Mr. Chairman: Yes, however you want to word it.

Mr. Morin: You will give ample time to municipalities to get organized, we will have ample time to see how this act is working and then implement it to the municipality and to what is apropos at that time.

Mr. Sterling: The issue is not only whether municipalities should come in. The issue is whether you opt in or out of this act. One of the problems with naming agencies that come in under a particular act is, if a new agency is created tomorrow, whether it falls out of the ambit of this piece of legislation. Section 2, the definitions, is not adequate in its present form. We have to have something that will scoop into the legislation future agencies

that are created. I do not think it is the desire of my caucus at this time to implicate municipalities, because this act is not written for the municipalities. It is not structured that way.

The one question I think the committee should debate is whether municipal police forces should be included in this bill. That is the key one: whether municipal police forces should be in or out. I am of a mixed mind on it. When I was carrying this bill, municipal police forces came forward to me and said they wanted to be under it. I found that quite astounding at the time because most police forces were trying to duck out of this kind of legislation.

The problem with excluding the municipal police forces is that there is a great sharing of information that goes on between the Ontario Provincial Police, which will be under this bill, and municipal police forces. What do they have in which file under which rules? The Royal Canadian Mounted Police is also under the federal legislation.

Hon. Mr. Scott: The reality is that most of the police forces with whom the OPP shares information do not have freedom-of-information legislation applying to them worldwide. By bringing in municipal police forces, you are not going to make everything right; you are simply going to reduce the category by one, perhaps the least significant one.

Mr. Sterling: But the chairman mentioned, for instance, that freedom of information for municipalities may be quite different in different areas of this province. What may be appropriate for the town of Merrickville may not be appropriate for the city of Toronto.

Hon. Mr. Scott: It probably is not.

Mr. Sterling: Okay, it probably is not, so there may be some latitude for municipalities to develop their own models for their own freedom-of-information act or bylaws or whatever you want to call them.

I think, however, in terms of municipal police forces, that it would be advisable not to have 150 different sets of rules governing information that they are handling. It would be better to have a provincial law dealing with that. The question I do not know the answer to is whether this act will be adequate for municipal police forces.

Hon. Mr. Scott: Leaving aside the issue of principle about whether municipalities or municipal police forces should be included and deferring to the committee on that--I personally have some difficulties with it--there is a major practical dilemma. I am not in the business of propounding legislation that is not going to work. Frankly, this act is designed to deal with a government and its institutions that are fairly centralized. If we are going to expand the act by expanding it to the municipalities or police forces--we extend it to hundreds of governmental institutions out there running all the way from Fort Frances to L'Orignal--the machinery for the operation of the act is going to have to be much more extensive than it is.

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We are in the course of preparing a manual for the operation of this system in the public service of Ontario and its institutions. We would need manuals for L'Orignal and Fort Frances, and we may simply have launched ourselves on an exercise that will collapse for bureaucratic reasons. That is why, if it is the view of the committee that we should be going to

municipalities, I would have thought the signal to the Association of Municipalities of Ontario is what you want to leave, and say: "Look, we are serious about this..This is something you are going to have to contend with. You have X years. You should begin to develop your response to the problem so that you can develop something workable."

Mr. Sterling: Part of the reason for putting the police force under this particular piece of legislation, or any legislation controlling information, is that its members will clean up any sloppy information practices they might have. They are more certain of the information they are collecting and they are more careful with it, etc., so that not only does it do something in a formal sense but it also does something in an informal sense.

On the other point about how many agencies can take this on, I only remind the Attorney General that when the province of Quebec brought in its piece of legislation, there were something like 3,300 different agencies that immediately came under its legislation, all the municipalities, all the school boards, all the hospitals, etc. Somehow it has not created total havoc.

I agree with your argument that this piece of legislation would not be appropriate for municipal or local government. I guess my question to you over the next few days will be, "Is it adequate for a municipal police force and are there going to be some real problems with it?"

Mr. Chairman: Okay, let me move you on to another area of cabinet documents.

Mr. Sterling: I want that section, whatever it is, changed so that in future it will hook in schedule 1 and schedule 2 agencies of the government of Ontario as well.

Mr. Chairman: On cabinet documents, I do not know of any act in the world that really goes after the current cabinet documents. Most of them say that there is some kind of time limit and at the end of X number of years, those documents come into this type of legislation. Is there any feeling that, whatever the X would be, the committee wants to take a position different from that?

Mr. Sterling: I do not know what the New Democratic Party amendment says and I will be looking at it with some interest. It has always been my feeling that there are cabinet documents and there are cabinet documents. Most cabinet submissions have various parts to them. They have the background. They have the history. They have certain factual information within them.

It seems to me that if you can devise a section within the act that would require a government to divulge that information at some stage of the legislative process, it would make that government much more accountable in what it was deciding in cabinet and would also lead to a much more intelligent debate when it was aired in public.

I do not know how you achieve that legislatively in this particular piece of legislation. In other words, if, for instance, the government of Ontario is proposing a policy on pay equity, which it did; it had a number of significant reports on pay equity that it refused to disclose for a period of time. No doubt the facts involved in those reports were included in or appended to the cabinet submission and may be part of an exclusion under a cabinet submission. I do not think the government should be protected from

divulging those reports once a decision has been made to go ahead with a bill, as it has in the recent past.

Mr. Chairman: Are you looking then for some mechanism that would say the documents of a cabinet are protected while they are under consideration, but that once a decision has been made and they proceed to implement that, there would be a flow of those documents, much as what we laughingly refer to as background reports, supposedly compendiums, come with legislation, so that when you deal with the legislation you have some awareness of what considerations were given by the cabinet as it went through its decision-making process? Are you looking for some kind of split such as that?

Mr. Sterling: That is right. I am looking at the ultimate accountability within the process, so that when a decision is made the parliamentarians have some right to say, "What reports or what facts did you have to base this decision on?" I do not want to know what their options were and I do not want to know what the discussion was within that room, because they do not have the right to that kind of access to our discussions in our caucus rooms about whatever we are going to decide on pay equity or on any other issue, but I do not think any parliamentary party or the public should be hampered in terms of the amount of information they had in making a decision.

Mr. Martel: What worries me about what we have here is that we continue the attitude that no one has access to the material on which decisions are based. I have always found it offensive that governments theoretically, and not just in theory, act on behalf of the people, but you are never privy to the material on which the decisions are based. After all, it is the taxpayers' money that allows any decision to be made.

One of the things I find most offensive--I can use an example from another jurisdiction--was the Petrocan argument, that it cost too much. Muldoon was going to run, and did run, on a policy of getting at those documents and presenting them. Once he got to power, having run on it, he refuses.

Mr. Sterling: Is this in New Zealand?

Mr. Martel: No. We do not get the documents. In fact, he is in a constant battle with the Auditor General of Canada about those documents and the auditor has had to go to court. You play games with the public when you are allowed to do that sort of thing.

Mr. Turner: The bureaucrats took over and told him how to do it.

Mr. Martel: He was the one who ran. Nobody went out there and ran an election on his behalf. He did, and he misled the public by saying those documents were going to become public because it was important.

I think it is important too that a government that spends that kind of money has to be held accountable. To hide behind cabinet solidarity and say, "Cabinet confidentiality is why we did that," even though you are spending billions of dollars, is really out of the question. People have to be held accountable, governments have to be held accountable for the decisions they make. You cannot be a scoundrel and hide behind cabinet confidentiality when you spend \$1 billion. Surely the public has a right to know what is going on and why these decisions were made.

One of the problems for me in Ontario over the years, which has frustrated me, has been trying to get access to documents; not to try to make it appear as though someone is crooked, but many of the documents and studies that are made have policy alternatives. As a critic in a number of fields, I always felt it was important that I should have access to the information I did not have and did not have the research staff to do, to be able to argue or suggest alternatives to what government in fact was doing.

Government found it simpler to hide those documents. It does not matter what ministry you are talking about. Over the years I have been here, it has been the same with every ministry. You could hide everything. Every research paper has been hidden. If you got wind of a research paper and asked for it, it was impossible to get your hands on it even though the public paid for it. Various ministries paid for those studies. Surely that material, which is important and is a considerable expense to the public, should be made available to members of the Legislature and to the public who paid for it.

I think there has to be a way. I am one of those people who say you cannot interfere in the decision-making at the time it is being done. I do not expect a government to give me the material. I might add that the same applies to giving civil servants the right to be involved politically. There is a level at which confidentiality is absolutely necessary until a decision is made. After that decision is made, surely the material can and must be made public. I am not sure how we get around it.

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Hon. Mr. Scott: It might be helpful to remind members of the committee what this act in its present form does. You may want to change it, but let us recognize what the act does and let us take as an example something that I am familiar with, how pay equity got to be a government bill.

Pay equity is going to be on the government's agenda. It is written in that infamous document and we promised to do something about it, so I am the minister who is responsible for preparing the cabinet submission. Every other minister knows that he is going to have to deal with pay equity--he or she--from the point of view of his ministry, whether it be the Ministry of Industry, Trade and Technology or the Ministry of Tourism and Recreation, and from the point of view of his constituency, so all the ministries begin to do studies on the impact of pay equity. They hire academics and get bureaucrats.

The studies Mr. Sterling was talking about are those kinds of studies, done basically by the Ministry of Industry, Trade and Technology and others, of how their minister should react to pay equity as a concept. Under our bill, those studies would be made available immediately upon the declaration of the policy, so your concern is met. Under this bill, as soon as the policy is effective or announced--I forget the language--those documents are all available.

None of those documents is the cabinet submission. The cabinet submission is what the minister responsible for the program puts before cabinet in terms of options. What we propose, consistent with all freedom-of-information legislation across the world, is that the cabinet submission should not be available until a time period has gone by--20 years.

Frankly, the reason for doing that is not to keep any information from you but to prevent cabinet solidarity from being damaged, because if you can see the cabinet submission I made on pay equity and see the pay equity bill,

you are going to be able to judge how successful or unsuccessful I am with my colleagues and the Premier (Mr. Peterson), and the theory of cabinet government, for what it is worth--maybe you want to reform that too; there is a lot to be said for it--is that you cannot do that and the cabinet hangs together.

The compromise in our bill, which I think goes further than many freedom-of-information acts--certainly further than anything in Canada--is that all studies and reports of any kind are out as soon as the policy is announced so that people in government and in the street can look at the information we had when we came to decide the policy. What is not out is the cabinet submission itself and the choices the minister responsible put to his colleagues.

If there is any doubt about whether the document is a cabinet submission or is in fact a study, if I try to get smart and attach some studies as appendices to the cabinet submission to protect them, that is what the commissioner is for. He is going to say: "Get off it, Scott. That is not part of the cabinet submission. That is a study that was prepared by the Ministry of Industry, Trade and Technology to fight you on pay equity. That has to go out."

That is the compromise we made, which is reflected in the present bill. It is not perfect but it seems to me it goes pretty far.

Mr. Sterling: I do not know how far it really does go. In most cases, on a scale of one to 10, it is 10 in terms of importance of issues. On most issues, which would be on the scale of one to four, only the minister prepares those kinds of reports you are talking about, so there is a bit of a problem. I understand that in some jurisdictions all cabinet submissions are open.

Hon. Mr. Scott: In Albania, all cabinet submissions are publicly released but you are executed if you ask for one.

Mr. Chairman: The same technique is used here. Yes, I have it.

Mr. Sterling: In my experience, I do not know how the background information I have read in terms of cabinet submissions would tell you whether you won or lost.

Mr. Martel: Look at Bill 70.

Hon. Mr. Scott: It is released; it is out. That background information gets out as soon as the policy is announced. If there is any question about whether it is background information to be released, that is the decision the commissioner makes. He can see everything.

Mr. Chairman: Okay. I think we have had a round on that.

Let me put the one on some provision for what the minister referred to as a "public interest override." Much of this bill tries to end these arguments by being as specific as it can, in what I might refer to as legalese, about what each person will do and what each clause covers. There is rather extensive identification of what is covered. Ms. Gigantes has moved two or three amendments that provide for what I guess is reasonable to call a kind of public interest override. Notwithstanding all the rigmaroles and the attempts in here to identify what you do in a given situation, there would

always be provision for the commissioner to make a decision based on the greater public interest.

I suppose in many respects any decision made by the commissioner would be falling into that category. If the documents going to cabinet are not, per se, the documents on which the decision was made but are other studies that have been collected and put together at that time and if somebody tries to hide some of them, the commissioner would have a public interest override in that sense to say, "That does not fall within the definition of the act," or whatever.

Is there a sense in the committee that you want to give the commissioner some greater power than is already contained in this act to act in the public interest? Notwithstanding the technical definitions of the bill, the commissioner would have the authority to intervene and say: "I read the act too, but the public interest is not served in this instance by following the exact letter of the act. The public interest is better served by releasing this document."

Ms. Gigantes has proposed several amendments that would give some kind of override provision. We need to discuss whether the committee is generally supportive of that notion or whether it is content to leave it. There is a strong thrust to this act not to have a whole lot of those decisions made.

Hon. Mr. Scott: May I put the other side very briefly? If you are going to have an override, what you are going to say is that, in effect, the commissioner can decide himself, without regard to the guidelines in the statute. He can override the guidelines in the statute. You have put the case that he will make that override in favour of disclosure. You will want to understand that he can make that override against disclosure. Let us face the reality. This commissioner is going to be appointed. He is going to be nominated by the government. He is going to have to be approved by the House, but he is going to be nominated by the government. If you are going to give him an override, you may find that, by nature, he is exercising it. He may be an ex-cabinet minister--

Mr. Villeneuve: Heaven forbid.

Mr. Chairman: There are a lot of them around.

Hon. Mr. Scott: --or someone like me who is exercising the override in favour of nondisclosure. Do not think this override is going to get more information out to the public; in fact, it may get less.

Mr. Martel: I think the concern becomes one of who makes that final determination. Governments prattle a lot and use stuff to their advantage. It may discuss it at cabinet and then it can draw a curtain of secrecy around it and use whatever it wants to its advantage.

That is why I used the Mulroney example that worries you. If politicians use something for political purposes and then hide behind cabinet solidarity, I guess it is a question of whether they become more self-disciplined in what they use and say. It is easy to say one thing and then get there and fly totally in the face of what you promised you would do. That was the most serious example because it involved billions of dollars. I think it is very important, it even gets more importance now that one considers he is rumouring about selling Petro-Canada. One should have the answers to those questions.

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You cannot use them when it is to your advantage, and hide, or use that cabinet solidarity to hide behind. That is what I think irritates people in the opposition. It becomes a convenient tool to hide behind. You use it when it is to your advantage and you hide behind it when it is not to your advantage. Somewhere along the line that is the dilemma we are in. How do you prevent one from happening and neutralizing that sort of abuse of information? Outside of self-discipline, I am not sure.

Ms. Caplan: It is my view on this issue that the point that the chairman made earlier about the three-year review is where this issue really fits. I think this bill is very specific, and over the term of the three years the experience under this bill will give us the opportunity, when we review in three years, to see whether or not there have been specific issues or questions raised that should be considered at that time because information was or was not forthcoming. It would be premature at this time to go into that kind of an override situation until this is up, running and working, and you see whether or not you have a problem.

I think that is in the category of the "what if", and I would like to be more specific. Given a track record, and some experience with the bill, before we enter into, especially heeding the warnings of the Attorney General, that the opposite might occur. My position would be that we leave it as it is and review it in three years.

Mr. Sterling: This is probably the key section of the bill.

Mr. Morin: Which section is that?

Mr. Sterling: It is section 50 of the act, the section we are talking about here.

I have a bit of a problem in terms of the section as it now stands because basically what the Attorney General has done is to make Bill 34 appear as if there is an independent review, when what he has done is to translate Bill 80 into a bill which appears as though there is an independent review. Under my bill, as you recall, the commissioner would make a recommendation that the information be released, then the minister would have a final say, about which there is a great hue and cry because the whole thing was saying that the minister still has the final decision.

If you read the exemptions sections in conjunction with section 50 you have, for instance, under section 18, "A head may refuse to disclose a record that contains financial information about a company." It says, "A head may." If the head says, "I am not going to release that information," then the information commissioner cannot do anything about that, whether it comes within the technical language of section 18 or not. If the head says, "This record is under solicitor-client privilege," under subsection 51(a), the information commissioner is totally hamstrung.

Under section 16, "A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada." If a head makes that discretionary decision that he is not going to turn this information over the information commissioner cannot do nothing about it.

Under section 14, "A head may refuse to disclose a record where the disclosure could reasonably be expected to interfere with law enforcement."

That is a judgement call. The information commissioner cannot do nothing about it. Excuse me for using double negatives each time I am doing this.

Mr. Chairman: I listen to Martel so I do not have any problem listening to you.

Mr. Martel: I learned that from you, Mr. Chairman.

Mr. Sterling: Under section 13, "A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant." All judgement calls by the head or the minister, and that judgement cannot be challenged by the information commissioner.

Mr. Chairman: Are you making an argument that you are accepting the need for some kind of override provision or no?

Mr. Sterling: I am saying that our caucus will have to make a decision, in the final analysis, on the wording of the section amendments that the New Democratic Party may put forward on section 50, or that some of those exemptions are changed around.

Hon. Mr. Scott: May I ask one question? Is your caucus really going to try and persuade the public that the most independent review system is one in which the minister can decide absolutely whether the information is to be released or not?

Mr. Sterling: That is the way you have it.

Hon. Mr. Scott: That is what Bill 80 did.

Mr. Sterling: No, that is what you have here.

Hon. Mr. Scott: It is just--there are limits.

Mr. Sterling: With respect, sir, this is what you have.

Hon. Mr. Scott: I am trying to be conciliatory. There are limits. I just cannot buy that the most independent system is one in which a minister gets the final say, which he did under Bill 80.

Mr. Sterling: Which, in effect, he has under this bill, too.

Mr. Chairman: Okay. I think I hear the warm and loving mixed messages.

Hon. Mr. Scott: Revisionism.

Mr. Chairman: The last area where we should entertain some discussion--I guess, the question would be are you content with the appeals provisions that are in here? Essentially, the appeal provision is almost exclusively to the courts. Is there any feeling that you want an expansion of that, an appeal to the minister to override the commissioner?

Hon. Mr. Scott: Can I put the issue as I see it here? What is now permitted, though it is not mentioned in this bill--it is found in the Judicial Review Procedure Act--is judicial review of the commissioner's decision. That means that a court can consider whether the commissioner made an error of law, denied natural justice or exceeded his powers.

The case that is made by Ms. Gigantes' amendment is that the courts should have the right to appeal generally, that is to say, beyond judicial review, which means that the courts should have the right to remake the decision the commissioner made, refind the facts, refind the law and sit in precisely the commissioner's place reviewing his decision.

I think that is the contest and I would be very interested in hearing how the committee feels. I must say my confidence in the courts' ability to do that is not as great as is some people's, but--

Mr. Chairman: One of bitter experience. I appreciate that you may want to--for example, one of the things that had occurred to me is that it is not clear to me, in the reading of the act, precisely how much power the commissioner has to overrule decisions made by heads. It does seem to me that there is an attempt made to really be specific about what the decision will be in advance. There is not a whole lot of judgement written into this act for discretion on the part of heads.

None the less, it is also true that any act that has ever been written has been interpreted in widely different ways by a whole lot of folks out there. So, bless our little hearts, no matter how hard we try to be specific in here, somebody out there is going to exercise a brilliant mind and make a decision other than what we thought.

How does that appeal process go? Maybe it would be helpful if, in the course of clause by clause, we kind of fleshed out just exactly how much appeal power does this commissioner have under this act, how much discretion are we envisioning for the heads who make these initial decisions, and are we really saying that the only real appeal mechanism is to get a lawyer and go to court. Those are decisions you are going to have to--

Hon. Mr. Scott: There are really two questions, are there not? The first question that you focus on is has the commissioner got enough power?

Mr. Chairman: Yes.

Hon. Mr. Scott: The second question is has the court got enough power on top of the commissioner? It seems to me that there is a debate in the committee about both those questions.

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Mr. Chairman: Yes. To refresh your memory, I would remind you of what we saw in the United States where the freedom of information acts were written in a certain vein. The American tendency to litigation kind of over--for example, in many of our visits there, the pretty common theme was that never mind what the act said, people are going to court. It is the going to court which causes the act to be implemented, or various documents to be let loose. So, in many of their jurisdictions, they said that it does not matter what your act says; if there is a provision in there that allows them to get in front of a judge, they will be prying information out of you on a regular basis. As soon as one person does it and the precedent is put on the record, then your law has changed de facto. As Canadian law-makers, we would not be terribly happy with that, but that did seem to be their experience.

Are there any other comments on that?

Mr. Bossy: Would that not diminish the commissioner? You are going

to see much more litigation and much more exercise of judicial review if a commissioner is really weakened by the fact that--because there are cases. Some information may be so valuable to someone that they can spend a lot of money hiring lawyers, and the best of them, to get that information.

Mr. Chairman: Yes. One of the things that had come to my mind was--I am very mindful of the American experience. They set out to provide a freedom of information act for the general population to learn about what the government was doing. In practice, in large measure it has become a business act. Corporations have the money and the resources to go to court and, although the freedom of information act is out there to kind of provide the public with information about what the government is up to, the private sector has gone to work on this, exploited it rather nicely, and taken it to a degree that I do not think the law-makers ever thought about. They are using it as a vehicle to find out what a competitor is doing and they have the resources to do that.

I think we should be a little mindful of that. It is not the Canadian experience.

Hon. Mr. Scott: I am not sure it is not the Canadian experience. The appeal to the commissioner is free and, I hope, is going to be reasonably expeditious and, I hope, the commissioner is going to be onside in terms of getting information out. There are two people and two people only who can afford courtroom litigation in our world. The first is government and the second are big corporations. It is my guess that by and large, they will be opposed to the outflow of information. General Motors will not want the citizens of Oshawa--I should not be personal, because they may be very good about it--but a large motor corporation may not want the citizens of Oshawa to have an environmental study that they have filed with government. So, General Motors is going to appeal to the court against the commissioner's decision, or government is going to appeal to the court--the minister, against the commissioner's decision.

My guess is that the appeals to the court are going to be taken by groups that are anxious, not to get information out, but rather to keep information in by overruling the commissioner. The one exception to that principle is the newspapers. They may use the appeal to the courts in order to open the floodgates.

You are going to find that some citizen in Oshawa applies to get a copy of the environmental study that General Motors has filed with the Ministry of the Environment about the Oshawa plant. The minister says, "No, it is protected or exempted." The commissioner says, "Yes." General Motors then goes to court. The court proceeding is going to take a year and a half and cost \$35,000 on each side.

The ratepayers of Oshawa, unless they can have a bazaar by next weekend, are going to find that they are not going to be able to go along. If they go along, they are not going to be heard in the court. My experience, having been there for 25 years, is that they are going to lose by default unless they can get the bucks together, and they will not be able to do it. There are Canadian cases under the Canadian act which illustrate precisely that point.

Mr. Sterling: The problem with the structure of the office of the information privacy commissioner that you have set up is that you--What is the information commissioner's job? Is he to assist somebody in getting access, or is he a judge? The problem is you have given him the dual roles. You have

said, "Okay, Mr. Information Commissioner, somebody wants information." They apply to a minister. If they do not get it, they go to the information commissioner. How can the information commissioner, on the one hand, act as an advocate and, on the other, be the judge?

Williams suggested that the information commissioner makes a recommendation and that the privacy commissioner, on the other hand, would make a recommendation, against release of information about a third party for instance, if he was in a negative position on a particular access request. Then you go to a board of three individuals who make the decision on the facts. From the board you go to the Divisional Court on a question of law or on a question of procedure.

My problem with the existing structure is, how can you resist having an appeal procedure of some kind to somebody when, in fact, the information commissioner is supposed to be an advocate of getting information?

Hon. Mr. Scott: He is not supposed to be an advocate. He is the judge. The request is made to the head. The head accepts it and lets the information out or refuses it. If he refuses it, the citizen appeals to the commissioner. The commissioner looks at the file, interviews the witnesses, examines the documents, allows cross-examination, hears submissions and says either that it goes out or it does not. My bet is that most commissioners are going to be in favour of making their act work in favour of disclosure of information.

What I fear is following that, if you open the floodgates to the court, you are going to allow the people who can afford litigation to take litigation. I served those interests for years. I was a practising lawyer. I know that if you are going to get a freedom-of-information case in the courts on the merits, redeciding the matter that the commissioner decides, those who can afford it are going to get the top lawyers and are going to be able to run along with the time frames. The average citizens are going to have to say: "What have we got into? We cannot afford to do this."

Mr. Sterling: Let us say my constituent wants a piece of information. Why is it going to be cheaper for him under your process? He has to go in and represent himself after reading this act or he has to try to read this act through to get at the information. He has been refused the information. Who is going to represent him?

Hon. Mr. Scott: He can get a legal aid lawyer.

Mr. Sterling: You are talking about the same problem.

Hon. Mr. Scott: If you are going to have the information commissioner an advocate, then every case is going to be taken to court because somebody has to decide, or you build in a whole new level of decision-making. The urge to make this as complicated in a procedural sense is, I think, one to be resisted.

We have a commissioner who is going to decide this dispute between the citizen and the minister. He is going to be able to look at everything and make a decision. Then there should be a limited appeal to the courts to make sure he did not exceed his authority or he did not deny anybody natural justice. That is called judicial review.

If you can go to the court and say, "Let us begin all over again," and

let the court look at everything and make the decisions all over again, you are going to be in what the federal system has, which is hearings that take years.

Mr. Sterling: What happens in most of the cases, I understand, is that in order to keep away from a process either the privacy commissioner or the information commissioner under the Canadian system goes to the various department heads and says: "We have had a request from a citizen for this information. Can we not work out a compromise?"

Hon. Mr. Scott: That is a mediation and that is contemplated under our act.

Mr. Sterling: What happens under this act is that the information commissioner, the guy who is going to make the decision, sends off somebody to do his negotiations for him, I presume.

Hon. Mr. Scott: That happens all the time. Look at the public complaints commissioner. His function is first a mediation function and if mediation fails, he then decides. There is no conflict between doing mediation--

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Mr. Sterling: He only makes a recommendation in the final analysis. This guy makes a decision in the final analysis.

Hon. Mr. Scott: So does the public complaints commissioner.

Mr. Sterling: He makes a recommendation only, as I understand it.

Hon. Mr. Scott: The mediator in any event, under our statute, is a different person than the commissioner, if you look at section 47.

Mr. Sterling: In effect, you have the information commissioner going into the office and saying, "Either you do this or I will hammer you." It is a process where you go up and you go down, and then you go back up again.

The citizen goes to the information commissioner and he says, "I want that record I do not have." The information commissioner says, "I will get a mediator underneath me to go out and negotiate." Then the mediator comes back and cannot resolve it, and it goes back up to the judge, the information commissioner, and he makes a decision.

Why not do as Williams suggested? Have that body there and allow the information commissioner and a privacy commissioner to act in their traditional roles as advocates of their various views and then go to the judgement. I do not understand.

Mr. Chairman: Are there any other comments that anybody wants to make on that section?

My reading would be that it is going to be tough sledding to do very much around enforcement. I think there is a clear difference of opinion on administration, but I sense that the majority of the committee supports the idea that there is a commissioner and two assistants, one who would probably do the privacy side and one who would do the freedom-of-information side.

I sense that you are probably going to indicate to municipalities that in the next round they are going to be included, and other agencies will be included.

There needs to be some redefining of cabinet documents, what is retained as a private document for a set period of time and what is released at the time a policy decision is made.

I did not hear a clear message on the public interest override, so that is kind of open season.

Except for the general consensus that the courts are really not a very workable appeal mechanism, I have not heard a lot of consensus around what the appeal mechanisms might be, but I sense that the Attorney General will want to flesh out what decisions the commissioner can make and how the appeal process will work.

Mr. Martel: Before we get to that--who I appeal to, Mr. Chairman--I just ask my friend for a copy of the administration manual that was submitted to various ministries, interpretations of the present legislation. The minister is carrying this legislation, and I asked him for a copy of that.

A couple of the people who contacted me this morning after they saw the Globe and Mail article, in which I called this an obstacle course, suggested to me that there was an information manual prepared and submitted to various ministries so they could interpret and understand the legislation. I thought it would be helpful to members of the Legislature to get that.

Hon. Mr. Scott: If you promised to read it, I would give it to you.

Mr. Martel: You know I would not ask for it if I was not going to read it. The minister shook his head. I just want to know to whom I appeal. If this is the way the freedom-of-information legislation is going to work, we are in serious trouble.

Mr. Chairman: Is there a feeling among the committee that you would like to see that draft?

Mr. Martel: I would like to get a look at it.

Hon. Mr. Scott: I would like to read it first, Mr. Chairman. That is the only reservation I have.

Mr. Martel: Freedom of information.

Hon. Mr. Scott: No. We have prepared a manual designed to assist the various heads in applying the act. It is in draft, and I intend to share this with the committee. I do not see any reason why you should not have it. I must say it is a little difficult when the honourable member pauses over my desk to see what I brought in today and then asks for what is on the desk, but I am not troubled by that. My desk is Freedom of Information City.

Mr. Martel: Obviously you should give us a copy immediately then.

Hon. Mr. Scott: We will see to it that he gets absolutely everything he is entitled to.

Mr. Turner: Not that he wants it.

Mr. Martel: Touché, John.

Hon. Mr. Scott: You can never give him everything he wants. You know that. You used to be the Speaker. You cannot give him everything he wants.

Mr. Warner: At the same time, perhaps we could get an explanation as to why a manual would be prepared before the legislation has been completed.

Hon. Mr. Scott: If you want to know, the reason for that is we want to be able to proclaim this legislation as quickly as possible after it is passed.

Mr. Warner: You are assuming it is going to be passed the way you have drafted it.

Hon. Mr. Scott: Not at all. I am not going to get out on that particular limb you chaps love to get us out on. I am assuming--

Mr. Warner: You do that all by yourself.

Hon. Mr. Scott: I have read the accord and I assume that in the end you people will pass some kind of freedom-of-information legislation, and we want to be ready to implement it as quickly as possible. To implement it in a large bureaucracy, you have to give people at all administrative levels advice and instruction about how to run it. You know that, and that is what we are doing. We want to be ready to implement this legislation--

Mr. Martel: The documents are confidential. That is the irony of the whole thing. Is that not wonderful? We are talking about freedom of information.

Mr. Warner: John is right. The more things change the more they stay the same.

Mr. Martel: There is a manual that is out there and that other people have, but to this point in time, you have not informed anybody that it is there and now you are deciding, "Maybe, I might give it to you." Is it not crazy? It is exactly what I was saying a little while ago.

Hon. Mr. Scott: No, I am doing it on purpose, because one of the fast ways to get this document from me is to pass this act. Pass the act and the document is yours, and much more.

Mr. Warner: I thought only the Tories did weird things.

Hon. Mr. Scott: There is going to be stuff from the last 40 years that you will not believe, all for your delectation.

Mr. Martel: I have been here for 20, and there is lots I believe.

Mr. Warner: I thought only the Tories did weird things.

Mr. Chairman: Members of the central committee, if you want a draft of the manual, I think you could give the minister a couple of days to take a look through it. I do think that if such a manual exists and the committee wants it, the committee will get it.

Mr. Warner: Let us have a little peek at it.

Mr. Chairman: Any further comments before we end this morning's session? We will start at three this afternoon and we will go through the clauses. I think you have some idea of what will carry and what will not.

Mr. Turner: Can we leave stuff here?

Mr. Chairman: You can leave the material in the room. Yes.

The committee recessed at 11:37 a.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
TUESDAY, MARCH 24, 1987
Afternoon Sitting



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Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Caplan, E. (Oriole L) for Mr. Mancini

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Also taking part:

O'Connor, T. P. (Oakville PC)

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, March 24, 1987

The committee resumed at 3:10 p.m. in room 230.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: We are going to come to order. We have a quorum, we can proceed and I think we had better get at it.

Hon. Mr. Scott: This morning, Mr. Martel asked if he could have a copy of the draft freedom of information manual. We are prepared to let him and other members of the committee have a copy of this. I would just like to make a couple of points about it before it is circulated or before it is made available to members.

This is a draft prepared by the public service of a manual of advice that will be given to departments and ministries about how to apply the Freedom of Information and Protection of Privacy Act. It is a draft in the sense that it has not been reviewed by the minister, or indeed by any but staff, and I have not read it. It is in that sense a draft. We would be grateful for any comments the committee or the public may have to make on it.

Second, it is based on the bill that is before you with the Attorney General's amendments. Of course, if the bill is amended, as it undoubtedly will be in the course of these hearings, the manual will have to be modified to reflect that effort. It is prepared now because we wanted to be able to swing right into action as soon as the bill is passed and begin applying freedom-of-information principles.

Mr. Chairman: Very good. We will accept that as tabled with those provisos.

Mr. O'Connor: Did you say it was a draft of a manual to be given to various ministries?

Hon. Mr. Scott: Yes.

Mr. O'Connor: Is there also one available to the public, that will be ultimately given to the public?

Hon. Mr. Scott: Undoubtedly.

Mr. O'Connor: I think that is what Mr. Martel was asking about yesterday.

Hon. Mr. Scott: No. He was asking for one for himself. That is very fair. He wants to see if there is any document he can find anywhere that will cause us any embarrassment. He has asked for a copy of this and I am delighted to let him have it.

Mr. Villeneuve: He would not want to do that.

Hon. Mr. Scott: That is his job. It is very difficult to keep those people happy, because they are always looking for some way to embarrass the government and I want to help them.

Mr. Chairman: As advertised, what we will do this afternoon is begin the process of going through the proposed amendments. To simplify matters, and in the faint hope that our own committee staff put this thing together properly, I am going to try to stick to the binder with the amendments as they were submitted to us. I will put them as they come. I take it the government's amendments are in here too.

Interjection: Yes.

Mr. Chairman: So we have all the amendments we know of in this black binder and they are in order.

What might facilitate matters on this runthrough is simply to deal with the amendments to see what will fit where, which ones are worth having an argument about, which ones are worth having a vote about. If we see consensus, it is clear that amendment will carry and we will obviously have a vote on that. If you have something you really want, I would appreciate it if you would give me some indication that you intend to put that, for whatever reasons, for purposes of having a vote. We are going to have a first runthrough, which will give us a rough idea which of these amendments will carry. There may be subsequent adjustments required.

I will not go through the normal clause-by-clause. I think we can do that when we have the final votes. I will go through the amendments as we have had them presented to us.

The first proposal is one of Mr. Sterling's, to delete the word "government" from subclause 1(a)(i). This would now read, "Information should be available to the public" as opposed to "government information." Is there general agreement that this would be acceptable?

Hon. Mr. Scott: Sure. It is bad English, but I think the ministry would be delighted to accept that.

Mr. Chairman: The next one has Mr. O'Connor's name on it. Now we are on the definition of "head," in clause 2(b) of the bill. Mr. O'Connor proposes to move that the definition of "head" in clause 2(b) of the bill be struck out and the following substituted therefor: "(b) in the case of any other institution, the person designated by that institution under subsection 3(2) as its head."

Hon. Mr. Scott: If I can speak for the ministry, can I say that with some reluctance, we oppose this? The statute requires the head to be responsible for the administration of the Freedom of Information and Protection of Privacy Act. That is deliberate. We want the senior political executive person in the institution to be responsible under the statute. We have allowed the head to delegate some of his responsibilities, but he will still remain responsible even when they are delegated.

We do not want the head to be able to nominate or designate a person who will do the freedom-of-information functions. We do not want the Attorney General to be able to say, "I designate the chairman of our consumer section

to deal with freedom of information." I should be able to get his help, but I have to be the one who is responsible for the enforcement of this act. I have to be the one who can be called on the carpet if something goes wrong. I should not be able to say, "I designated the chairman of the consumer information bureau, and if there is a mistake, it is his problem."

Mr. Chairman: The government is rejecting that. Is there any sense that you want to pursue it?

Mr. O'Connor: I might just say that amendment, along with the third amendment I have, to subsection 3(2), and the second one, to clause 2(b), that the definition of "institution" be struck out and a new definition substituted, are to be read together and in conjunction with a rather major amendment I will be making with respect to the opting-in and opting-out procedure of naming ABCs under this bill. I will reserve my argument to deal with all those at the same time, if I may. At this point, I do not accept the minister's rejection of that argument.

Mr. Chairman: That includes the second section 2?

Mr. O'Connor: Yes, that plus number two of my amendments, the definition of "institution," plus number three should be read together.

Mr. Chairman: Let me just go through it in order so people are not riffing back and forth.

The second amendment moved by Mr. O'Connor is in clause 2(b) of the definition of "institution," and we are going to withhold judgement on that.

The next one I want you to deal with is Ms. Gigantes's proposed amendment to subsection 2(1), the definition of "institution," that the definition in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "and" at the end of clause 2(1)(a) and by adding thereto the following clause:

"(a) the corporation of every municipality in Ontario, every local board as defined by the Municipal Affairs Act, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario."

I understand from our comments this morning that the government is not prepared to accept that.

Hon. Mr. Scott: The government is not prepared to accept the inclusion of municipalities.

Mr. Warner: Is the government prepared to accept that municipalities should be included three years from when the bill is proclaimed?

Hon. Mr. Scott: I do not think a government today can predict what a government three years from now may decide. After all, it is your view that it will be a different government three years from today, although I disagree with it.

Mr. Warner: I fully realize that will happen, but that was not my question. My question was, would you agree that municipalities should be included?

Hon. Mr. Scott: Three years from today?

Mr. Warner: Yes.

Hon. Mr. Scott: No.

Mr. Warner: In this bill, so you have automatically given notice.

Hon. Mr. Scott: No. I think it is fair, as the chairman suggested, if the committee wishes to do so--and you can do that specifically, if you want to, in your review process sections--to say we will be looking three years hence at a determination to include municipalities.

Mr. Chairman: What is deemed to be acceptable from most quarters would not be this amendment, but at a subsequent amendment in the review sections, you would put your indication in there, however you might want to word that.

Mr. Warner: Noting that it is watered down.

Mr. Chairman: Yes.

Mr. Warner: It is a nothing.

Mr. Chairman: What I have to deal with is the proposal by Ms. Gigantes. I am looking around the room and seeing that it is not flying.

Mr. Sterling: There are a lot of problems here. Things are going to go around like this a little bit.

Mr. O'Connor's amendment by its general nature, in making the government opt out rather than opt in, brings in municipal police forces, for instance. Therefore, if his amendment carries, it will bring in municipal police forces, as I understand it, because police commissions will be in.

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Mr. Chairman: I think I can help you a little bit. If you will address yourself very specifically to the amendment that is now before you and give me some indication as to whether you support that, you will have solved my problem.

Second, if you want to deal in the second round, when amendments are formally put and we have the discussions as to the detail of whether a police commission is in or out, at a point where it will make some difference, you can make your arguments and have your votes. If the votes do not carry, as in this instance it appears to me this amendment is not going to carry, you may want to prepare a subsequent amendment supporting Mr. O'Connor's proposal or another amendment on the review section. There are other possibilities to be explored; I am just trying to get some sense of whether these amendments are going to carry for now.

Mr. Warner: I am just a touch confused here. First of all, I thought we were dealing with an amendment placed by Ms. Gigantes on subsection 2(1).

Mr. Chairman: Yes, we are.

Mr. Warner: All right. There was some reference made to an amendment by Mr. O'Connor--

Mr. Chairman: Yes.

Mr. Warner: --which amendment I do not believe I have.

Mr. Chairman: It is the previous one; it is in the book.

Mr. Warner: We are flipping back and forth; is this the idea?

Mr. Chairman: It would be real helpful if you did not flip back and forth. Just tell me what you are going to do on these amendments, and the next time around, when we actually move the amendments, you can have your arguments and your votes.

Mr. Warner: Can I understand now that we have all the amendments?

Mr. Chairman: All the amendments we know of that have been tabled are in this binder, yes.

Mr. Warner: So there are no more?

Mr. Chairman: There may be more amendments made.

Mr. Sterling: In fact, I have given to the clerk 10 or so more amendments.

Mr. Chairman: They are being photocopied, and we will give them to members of the committee as soon as we have them.

Mr. Sterling: That is going to happen was we go through this because of the nature of this thing.

Mr. Chairman: Yes.

Mr. Sterling: We will deal with them as they are right now, and that is fine.

Mr. Chairman: Yes. Just let me deal with what I have, and then we can deal with new ones that you have.

Mr. Sterling: I want to indicate that our parties would not support this amendment as it now stands. Because of the nature of Mr. O'Connor's amendment, we might be willing to entertain the inclusion of municipal police forces but not the municipal corporation as a total.

Mr. Chairman: We have the message.

Mr. Sterling: You will see that when he moves his amendment with regard to subsection 3(2).

Mr. Chairman: All right. The next one I have is a government amendment, that the definition of "law enforcement" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding thereto the following clause: "(c) the conduct of proceedings referred to in clause (b)."

Hon. Mr. Scott: The purpose of doing that was it was believed that the law enforcement definition, which covers policing and investigations and

inspections that could lead to prosecutions would not cover the conduct of the prosecutions themselves. Therefore, we add (c) to fill in what is clearly intended, that it cover the conduct of proceedings themselves.

Mr. Chairman: Is there general agreement on that?

Mr. Warner: We discussed this morning a little bit the part that says "law enforcement means (a) policing and (b)"--

Mr. Chairman: Yes.

Mr. Warner: Just to flag it, people may wish to consider amalgamating (a) and (b), leaving out the word "and": "'Law enforcement' means policing, investigations or inspections that lead or could lead to proceedings in a court.... It may help to get around the little difficulties we were having to a section later on in the bill dealing with policing.

Hon. Mr. Scott: That would not work in the sense that it would then mean that what was covered was policing that could lead to proceedings in court.

Mr. Warner: Right.

Hon. Mr. Scott: What we wanted to cover, as I tried to make plain this morning, was the policing that is not going to lead to any proceedings at all, such as policing that gives rise to security precautions for the Premier (Mr. Peterson) or for the Legislature, the police here who collect information that somebody is going to be in the building this afternoon who is going to throw off a bomb. It may be completely inaccurate information, it may be idle gossip, but we have police who collect that and who take steps to respond to that possibility, even though it may be inaccurate. We could not collect that information or distribute it to our staff if it was not part of law enforcement.

What you are doing, which looks neat, is really making policing covered only if it could lead to proceedings in court.

Mr. Chairman: If you will allow me, I will go to the next proposal by Ms. Gigantes, which deals with that exact point.

Ms. Gigantes moves that the definition of "law enforcement" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out clause (a).

I take it from what you have just said that the government rejects that.

Hon. Mr. Scott: That is correct, for the reasons given.

Mr. Chairman: Is there any sense pursuing it?

Mr. Martel: I think Evelyn's concern was that it is so broad. I understand what the Attorney General is trying to say, that there are circumstances which necessitate that--

Hon. Mr. Scott: Let me put our difficulty this way. Policing in modern terms is made up of two component areas. The first is policing, investigation and prosecution. That is what you see if you go down to the courthouse. But policing also is connected with information gathering and

security provisions. For example, every time there is a large parade in downtown Toronto, there is policing designed to ensure that the police know where the people who cause trouble are, people who throw bombs or carry guns. They do that by collecting information, some of it reliable, some of it not reliable. That is policing.

Ninety per cent of the time nothing happens, but it is policing which is the collection of information designed to achieve ways of securing the private peace. It is an important policing function, and we have to be allowed to do it and to collect the information necessary to do it.

Mr. Chairman: Is there any sense that this kind of amendment is worth proceeding with?

Interjection.

Mr. Chairman: The next one is proposed by Ms. Gigantes; it is on subsection 2(1), the definition of "law enforcement investigation." She proposes to move that subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following definition:

"'law enforcement investigation' means an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result."

Hon. Mr. Scott: That is precisely the same issue: an effort to restrict law enforcement to a law enforcement investigation leading to a case. There is a bundle of amendments that Ms. Gigantes has made, of which this is one, just like the one we have dealt with. It seems to me if you reject leaving out "policing," you reject this sort of amendment and all others like it.

Her theory, I understand. Her theory is that information gathering in aid of public security should not be permitted to collect information and distribute it. That issue was thoroughly canvassed by Dr. Carlton Williams and rejected.

Mr. Martel: Let me say that I think my friend is going one step further than what Evelyn was concerned about. I think she indicated she was not concerned as much about collecting; it was the dissemination of that information that was bothersome.

Hon. Mr. Scott: But the chief who collects the information has to distribute it to the chief in the next town or to the police officer who is going to be in charge of the parade. That is distribution of the information.

Mr. Martel: But you make the sweeping statement that she means all of this. Her primary concern is how the information is handled; once it is garnered, how do you handle it?

Hon. Mr. Scott: If you read Dr. Carlton Williams's report, I think you will see that the proposition was made to him that law enforcement should be restricted in meaning only to investigations leading to court cases. He looked at that and said, "Look, that is much too narrow a view of policing in a free society," and he rejected it.

Ms. Gigantes's proposal focuses on precisely that debate, and she does not accept--and I understand it; she made this plain to me--Dr. Carlton

Williams's report on that score. The fact is, if policing is not included within law enforcement, we cannot collect the information, we cannot distribute and you will see later we cannot even use it, if you look at the amendments we considered yesterday.

1530

Mr. Chairman: I read a consensus that you do not want to proceed with this.

For your information, we have now distributed the remainder of the amendments, most of which or all of which I believe came from Mr. Sterling. I will deal with those after I have dealt with the ones that are in the book, just to save you aggravation.

Ms. Caplan: So we should not put them in?

Mr. Chairman: No. I would not put them in now. But if you have put them in--

Mr. Warner: They are in numerical order.

Mr. Chairman: I know.

Hon. Mr. Scott: We have not seen them.

Interjections.

Hon. Mr. Scott: As long as we are not dealing with them, because we have not seen them.

Mr. Chairman: That is my problem. I think it is unfair to deal with them now. They just arrived. The Attorney General has not seen them. I have not seen them. I will deal with them after I have dealt with the ones in the book.

The next amendment that I have proposed is from Mr. Sterling and it is on section 2(1):

"I move that section 2(1) of the bill be amended by adding thereto the following definition: 'person' means an individual person or corporation or a partnership or unincorporated organization or association of persons."

Hon. Mr. Scott: I do not want to be difficult, but "person" is defined in the Interpretation Act, which governs how "person" is to be understood in this act. The definition that Mr. Sterling proposes is different from the definition in the Interpretation Act. I would like some information as to why it is that the Interpretation Act definition of "person," which is very broad, is not satisfactory or why you want a different definition of "person" from that given by the Interpretation Act.

Mr. Sterling: I do not know whether I want a different one or the same one. What I was trying to do by suggesting that it be put in was to prevent the necessity of a person who picks up this act from going to the Interpretation Act.

Hon. Mr. Scott: You have picked a different definition. "Person" is defined in the Interpretation Act and would apply to our act without another

word more broadly as including--and "including" is a broader word than "means"--"a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law." If that definition suits you, we do not have to change this act at all. If it is too broad, and you want to narrow it, then what you propose may be what you want.

Mr. Chairman: What is your pleasure?

Mr. Sterling: My pleasure is to have it as broad as [failure of sound system] is not personal information.

Hon. Mr. Scott: No. That is the distinction between "means" and "includes." If you say "means" that is the outside parameter of the definition. If you say "includes" following a general definition, as we have done here, those inclusions are merely examples so that there will be no doubt about those particular cases.

Mr. Sterling: I know.

Mr. Chairman: Are you accepting it or not?

Hon. Mr. Scott: I think it is unnecessary and I think it narrows the definition.

Mr. Chairman: Do you want to pursue it or not?

Mr. Sterling: No.

Mr. Chairman: Ms. Gigantes moves that clause (a) in the definition of "personal information" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by inserting after "sex" in the second line "sexual orientation."

Hon. Mr. Scott: We have no problem with that.

I presume that information about sexual orientation would be regarded as personal information.

Mr. Chairman: Any problems from anyone?

Mr. Sterling: I still have not found where we are. Personal information.

Hon. Mr. Scott: Are you going to vote on this one? I want a recorded vote.

Mr. Chairman: Fortunately, we are not having any votes this afternoon.

Hon. Mr. Scott: I want this one recorded.

Mr. Sterling: We have no objection to that one.

Hon. Mr. Scott: O'Connor votes for sexual orientation.

Mr. Chairman: Ms. Gigantes moves that the definition of "record" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the

Attorney General, be amended by striking out "subject to the regulations" in the first line of clause (b).

Hon. Mr. Scott: It is the issue that we dealt with yesterday. If you cannot reduce the meaning of "record" for this purpose, you are going to have a very unwieldy system in which--what was the example we had yesterday--the motor vehicle registration system would be deemed a record for the purpose of--

Mr. McCann: It could be searched to produce a record.

Mr. Chairman: So the government is not accepting the amendment?

Hon. Mr. Scott: Yes. I just think it makes it unworkable.

Mr. Warner: I am a bit confused. Why?

Hon. Mr. Scott: Because you will create a system that is unwieldy. It is unworkable, if you cannot reduce the record. Explain.

Mr. McCann: The issue is that clause (b) of the definition of "record" contains the words "subject to the regulations" which means a regulation can be enacted that would place some limitations on how that extended definition of "record" is to be read, and if there were no regulation-making power, then the government position is that the definition would simply be too broad. It would allow requests for records to be created from existing databases that would create very large administrative burdens for the institutions. Now, it will have to be done, but the regulation can govern the circumstances under which it is to be done and can provide some limitations on the obligations of the institution under there. We are talking about the creation of new records. We are not talking about existing records in this context.

Hon. Mr. Scott: The example I gave yesterday is that somebody wants a list of all the blue-eyed drivers in Ontario; that is to say, all the people who list "blue" opposite "eye" on their form when they apply for a motor vehicle licence. Under the expanded definition, there is a record of that in the sense that there is a computer that you can push and get all that information. It seems to me that would be an absolute waste of time, in nobody's interest and at great expense to the taxpayer. All we want to do is to be able to refine the definition of "record" so we do not get into those absolutely unwieldy circumstances.

1540

Mr. Warner: I understand what you are getting at. Okay. In the same light then--

Hon. Mr. Scott: We might have to reprogram the computer, which we could not do without--

Mr. Warner: I understand now what my colleague means. The example you use, of course, illustrates some frivolity with public money, but at the same time, it means that a government would be capable of drafting, subject to regulations, that which would be excluded.

Hon. Mr. Scott: No. The "subject to regulations" is not going to exclude the disclosure of any documents. Any document that is in there you can get.

Mr. Warner: But it is the new ones, as you say.

Hon. Mr. Scott: No.

Mr. Warner: The new categories.

Hon. Mr. Scott: The expanded. What you are entitled to get is access to a record.

Mr. Warner: Right.

Hon. Mr. Scott: A record will in some cases be a file. Because we are now dealing with more than files, there is an expanded definition of "record" to include computer systems. All we want to be able to do is not prevent the disclosure of any information but to restrict the definition of "record." We might say, for example, that a record will be all drivers on a by-county basis so that anybody requesting the information might have to ask for blue-eyed drivers in the county of York and then in subsequent counties, so that we can pull that information in a prudent and sensible way. It is a purely mechanical administrative question that is not going to restrict the disclosure of information one whit. If we have the information, the other sections of the act say you are entitled to have it.

Mr. Martel: Yesterday the example that was used--and I just want clarification here--was of the silly twits at the Workers' Compensation Board, where for years you had to go up there or send your assistant up there and write out longhand--

Mr. McCam: No. If the record already exists, then this has no application. This is just where you have a base of information and somebody wants you to create a record out of that base of information, which you can do sometimes fairly easily and sometimes with great difficulty, and the purpose of allowing regulations is to define the circumstances in which the institution would be obligated.

Hon. Mr. Scott: Let me put the proposition to you this way. You have a computer bank, which has unlimited information in it. The government writes a program that allows it to produce information out of that bank. We say that in cases where we have existing programs, the public can have exactly the programs we have, but the public cannot invite us to write a program for them that will obtain information that the government does not have or want.

Mr. Warner: Or is unwilling to provide. such as in the case of miners who have died from the gold dust lung problem?

Hon. Mr. Scott: No, not at all. Let us assume that you wanted the names of all Jews who have motor vehicle permits in Ontario. That information may be in the computer bank. We do not have a program to get that information out because we do not need that information. It is irrelevant to any purpose of government.

We do have a program to get out the ages of motor vehicle operators. That is our record. We have their ages. You can get what we have, their ages. You cannot require us to write a computer program to get information that you alone want and that is not part of the government record.

Mr. Sterling: Under this bill, you can redeem those costs from the individuals.

Hon. Mr. Scott: If you have to shut down the system to create a new program for someone who wants to get information that the government is not collecting or using, then you are not getting access to government information; you are using the government computer to create information of your own. That may be a desirable purpose, but that has nothing to do with freedom of information.

Mr. Martel: Let me try this one on. There is a battle going on with the United Steelworkers of America, the Minister of Labour (Mr. Wrye) and the Workers' Compensation Board to obtain the documents on which ultimately there is going to be a decision on whether survivors of deceased gold miners are entitled to benefits. At the present time, those documents are still unavailable. The Minister of Labour has them, a number of doctors have them and the steelworkers have been trying to get them, but it is not designated at the present time by any regulations with respect to deciding what criteria will be established. As long as that is sitting there without any regulations affecting the criteria that will be established for gold miners, the steelworkers are not able to obtain that information from either the Workers' Compensation Board or the Ministry of Labour.

Hon. Mr. Scott: This section has nothing to do with that, and subject to the other parts of the act, you will be able to get all that information. What you are talking about is you want to get access to files where certain citizens have suffered a certain illness and where reports have been made on their physical condition, medical condition and so on. Those files exist and are somewhere at the Workers' Compensation Board or the Ministry of Labour.

Mr. Martel: No.

Hon. Mr. Scott: They do not exist?

Mr. Martel: That is not what I am asking about. I am saying there have been a number of scientific studies done that are being looked at by a peer review group.

Hon. Mr. Scott: Yes, you will get those.

Mr. Martel: But the United Steelworkers cannot get a copy to allow a peer review doctor of their choice to go through the documentation at the present time.

Hon. Mr. Scott: Pass the bill and you will get it.

Mr. Martel: There is no regulation.

Hon. Mr. Scott: This section has nothing to do with that issue.

Mr. Martel: But that is what the fear is. We are trying to drive home what the fear is. You can hide behind it for ever.

Hon. Mr. Scott: I am trying to tell you that the fear, if you read the section, is not going to occur. What this section does is define "record." There is an expanded definition under clause (a), "correspondence, a memorandum, a book, a plan..." listing all the things you want. Then it says, in addition, "subject to the regulations, any record that is capable of being produced from a machine-readable record under the control of an institution...." What that means is if you have a data bank of information,

you are capable of producing from that a wide variety of information, depending on the program you write for that data bank.

All we are saying is if we are going to write programs that we do not use ourselves to meet the needs of people who want information, that should be done subject to the regulations.

Mr. Martel: I am a layperson, not a lawyer, but I read that first part, that correspondence, etc., is available subject to the regulations that exist. If there are no regulations that exist, am I still capable of obtaining it?

Hon. Mr. Scott: No. I do not think it is read that way. Clause (a) is all included as part of record. Clause (b) is an additional category on top of (a).

Mr. Chairman: So if the information you want is in any of those headings under clause (a), you set it. The only thing we are talking about is in clause (b) there is a definition of "record" to include those things that are kept on computers. You could get a computer run of it, but there would be a regulation which would indicate how you would go about that. In other words, we do not shut down the Ministry of Transportation and Communications computers to provide you with your information request. We write a regulation that says, "It is going to cost you some money if you want that information, and you will get it at a time when we can work it into our programs so that it does not interfere with our normal business day." That is my understanding of what is being proposed here.

Mr. Warner: What does "the regulations" stand for?

Mr. Chairman: I beg your pardon?

Mr. Warner: When it says "subject to the regulations"--

Mr. Chairman: You have to write the regulations which say how much is it going to cost a person to rewrite a new program and what is a reasonable amount of time in order to get it.

Mr. Warner: You are referring to the regulations attached to this act?

Mr. Chairman: Yes. After the bill is passed, the government will write a regulation which says--

Mr. Warner: Do we have those regulations now?

Mr. Chairman: No.

Mr. Warner: They are not in that document you brought with you this afternoon?

Mr. Chairman: No.

Hon. Mr. Scott: I think the chairman has put it exactly right. If it is under clause (a), you will get it just by asking for it. If it is under clause (b), what you are talking about is a record that does not exist and you are basically saying, "I want the government to use its computer to create a record for me by doing a program and feeding the program into it." All we are

saying is that the right to create a record of your own devising, that government has never wanted or needed, is going to be done subject to the regulations. We cannot allow the Robert Simpson Co. to come in here and use our computer to write records.

1550

Mr. Chairman: Is there any sense in pursuing this?

Interjection: No.

Mr. Chairman: The next one: Ms. Gigantes proposes that subsection 2(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "30" in the second line and inserting in lieu thereof "20."

Hon. Mr. Scott: This is on page 4 and we had an interesting discussion about this some time ago--

Mr. Sterling: Before we go to that, I was cut off on Mr. Warner's amendment. We are not in total agreement with his amendment, but there may be some middle ground.

Mr. Chairman: That is fine; okay. I do not mean to preclude anybody coming back in with other amendments later which would identify the middle ground.

Mr. Sterling: I think I should indicate it to him so that the record has that.

Mr. Martel: Might I suggest to the minister, who is the new boy on the block, the problem around Queen's Park, unlike at Ottawa, is that the statutory instruments in Ottawa is chaired by an opposition member deliberately, whereas in Ontario it is parliamentary assistants to various ministers who do it and the opposition does not get to see the regulations before they are changed. It seems to me if you want some trust in regulations, because most people do not see them, you establish a statutory committee made up of some opposition members so that everyone sees the regulations and makes sure they conform to the act as it exists.

Hon. Mr. Scott: I am enormously impressed by committees chaired by opposition members.

Mr. Martel: I am just saying to you that is part of the problem.

Mr. Chairman: You notice it is starting to get a little thick up here.

Hon. Mr. Scott: You will remember, Mr. Chairman, we had a good discussion about this about a year ago. The issue is, when do you want personal information to become automatically public, 30 years after you die or 20 years after you die, as Ms. Gigantes said?

Frankly, we opt for 30 because we think there should be a generational gap, and 20 is a little short. When is the information about your old man going to be in the public domain, 20 years after he died or 30 years after he died?

Mr. Chairman: Further discussion on it? Do you have any comments on that proposal?

Mr. Martel: Split the difference and make it 25

Mr. Chairman: There is a reasonable compromise brought forward by Mr. Martel.

Hon. Mr. Scott: Which was?

Mr. Chairman: To make it 25. That is one we could set aside depending on what things are brought back in other areas. The next one concerns subsection 2(3), where Ms. Gigantes proposes to add a new subsection.

Hon. Mr. Scott: This you are not going to need unless you include municipalities. We have not voted, but we have considered the municipal issue and you would not need this amendment unless you were going to include the municipalities.

Mr. Chairman: Agreed?

Mr. Warner: Yes, it is agreed. If the municipal one fails, then this one is automatically adopted.

Mr. Chairman: Mr. O'Connor proposes that section 3 of the bill be amended by adding thereto the following subsection:

"(2) Every institution that is not a ministry of the government of Ontario shall designate a person to be the head of that institution for the purposes of this act."

I understood the minister to say earlier that he rejected that concept.

Hon. Mr. Scott: This is part of a series of amendments we are having trouble with, one of which I referred to earlier.

Mr. Chairman: Do you want to pursue that?

Mr. Sterling: I think Mr. O'Connor wants to speak to it.

Mr. O'Connor: Not right now, but we will discuss it when we discuss them all together with section 11.

Mr. Chairman: Mr. Sterling proposes that section 4 of the bill be deleted and the following be substituted therefor:

"4(1) There shall be appointed as officers of the Legislature an information commissioner and a privacy commissioner to exercise the powers and perform the duties prescribed by this act.

"(2) The commissioners shall be appointed by the Lieutenant Governor in Council on the address of the assembly.

"(3) The commissioners shall hold office for a term of five years and may be reappointed for a further term or terms, but are removable at any time for cause by the Lieutenant Governor in Council on the address of the assembly.

"(4) The commissioners may appoint an officer of his or her staff to be an assistant information and privacy commissioner; and

"That all other sections of this act be amended to reflect this change."

This is a fairly substantial area of discussion. We went through it this morning. The government has rejected this concept. Mr. Sterling, do you want to pursue this?

Mr. Sterling: I guess I am offering two choices that the Attorney General has to make. He either provides some kind of appeal process, or my tendency now is to go with the New Democratic Party amendment in terms of a trial de novo to court.

Hon. Mr. Scott: I will obviously respond to whatever the committee says about whatever you do in court, whether you want a wide-open appeal and we will live with whatever downsides are in that; if the committee is going to opt for that by majority, I am not going to allow the act to be shipwrecked on that. But the two-commissioner system that is proposed here involves an opting for the federal system as opposed to the Quebec system, which I do not do, and it involves a complete rewriting of the statute; the statute is predicated on one commissioner.

Mr. Chairman: Norm, do you want to set this aside and go with the other one?

Mr. Sterling: I want to withdraw this.

Mr. Chairman: Okay.

The next one I have is from Ms. Gigantes; she proposes to move that subsection 4(4) of the bill, as reprinted to show amendments proposed by the Attorney General, be struck out and the following substituted therefor:

"(4) The commissioner shall appoint an officer of his or her staff to be assistant information commissioner and another officer of his or her staff to be assistant privacy commissioner."

This is the flipside of that.

Hon. Mr. Scott: I think that is a good idea. However, I would prefer that the power, which is the commissioner's right now, be left to him to exercise. One of the difficulties is that if you stipulate that the deputy of the commissioner will have specific powers, it gives the deputy, whoever he is when he is appointed, a little muscle with respect to his boss: "I am the deputy under the statute. You cannot ask me to do this and that because I am the deputy information commissioner and not the deputy privacy commissioner."

I think the commissioner when he is appointed should take administrative responsibility for his system. If I were the commissioner, I would want someone in charge of privacy and someone in charge of information. But if you compel them to have them, you then build in competing powers in the system, which is going to make the commissioner's job tough.

Mr. Martel: Let me speak to that--

Mr. Chairman: We seem to have agreement on this. Do you want to pursue it in this forum or in some other forum?

Mr. Martel: Let me tell you what worries me about the word "may." That is a signal only. One has only to go back to the original Ombudsman, who

was a very powerful individual. Arthur had a way of having his own way about things; he was high profile--the whole thing. I am not being critical of him, but the point I make is, should he get this type of legislation that he is going to work under and it says he may appoint?

I would not consider the present Attorney General in that category, but if you had someone like Arthur who once appointed was his own man and he decided he did not want to do it, with "may" there, he does not have to do it, and that becomes a real worry. He can say, "I do not want to run it that way." Everybody does not want to run it the same way.

Hon. Mr. Scott: I am troubled about it, and let me tell you why. I will rephrase it again. You are going to have a commissioner and you want to make him responsible for running the show and running it efficiently. If he does not run it efficiently, you can be sure when you call him on the carpet, the first thing he is going to say is: "It is your act that has caused the difficulty. You have forced me to do this and to have this person and that person." My instinct, to use the Reaganite expression "management technique," is to say: "You are the commissioner. You can do these things if you want to, but you are running the show and had better be good or your head is going to be off."

Mr. Sterling: If you look at my amendment, it is very close to the New Democratic amendment. I know you cannot look at them right now, but if you take a peak at it, it is about the same thing.

1600

My concern, as I said this morning, is that the assistant privacy commissioner, if you are not going to separate them, should have some muscle vis-à-vis his boss and that in some cases he be able to indicate the concerns of the privacy side versus the information side, so people will have someone to go to when there is a problem.

Therefore, we indicate our support for that kind of concept. The wording, I do not--

Mr. Chairman: It sounds to me like this is one we should bring to a vote; there may be an opportunity to work out something--

Mr. Morin: Or perhaps it could be implemented after the three years when the act is being reviewed, subject to a recommendation made by the commissioner.

Mr. Martel: We can do it in reverse and say if it does not work at the end of three years--

Mr. Chairman: It does sound to me that an amendment of this nature is going to carry.

The next one I have is Mr. O'Connor's proposed amendment that section 11 of the bill be struck out and the following substituted therefor: "(1) Despite any other provision of this act, a head shall disclose any record to the public or the persons affected as soon as practicable if"--

Mr. Turner: There is a prior amendment, I think.

Mr. Chairman: Not in my book.

Interjection.

Mr. Chairman: That is one that came in late; it came in yesterday, but it is late.

Mr. Turner: It is in the book.

Mr. Chairman: Are you ready to deal with this?

Interjection: Are you ready to deal with this?

Mr. Chairman: This is the problem. This is one that was handed to the committee yesterday. It came in late. You may have put it in your book. It is not in the book.

Hon. Mr. Scott: I am prepared to deal with this. What this provides is that the only people who can get access to records are Canadian citizens or permanent residents. Frankly, I am not in favour of that. I think people who are not Canadian citizens and permanent residents should be able to get information out of government too. This is an amendment designed to restrict the flow of information, and I am opposed to it.

Mr. Martel: What about landed immigrants?

Hon. Mr. Scott: They could not under this amendment because they may not be permanent residents.

Mr. Chairman: Do you want to set this aside or do you want to deal with this one now?

Hon. Mr. Scott: I think a permanent resident is a landed immigrant. No?

Mr. McCann: I think "permanent resident" is the term the federal legislation uses now. "Landed immigrant" has gone.

Mr. Sterling: The costs of this act are going to be picked up basically by the Ontario taxpayers. I believe there is experience in other jurisdictions where you have a freedom of information act that very few of the costs are recovered by the government at hand. I believe the people who should have access to it are those people who, first of all, reside within our province, and second, reside within our country. That is why I have put that restriction in.

I only say to members that the users of this act historically are, first, corporations, domestic corporations and foreign corporations; the second users of this act are usually people who have had some criminal record. In the United States alone, one felon who lived off the coast of the United States cost the United States government \$500,000 in terms of asking United States agencies for all the records they had in relation to that particular felon. That is a recorded case in the United States.

You can get around this section if you are an American. You can go to a Canadian information company, which it has the right to require it, but that Canadian company is within some care and control of Ontario or Canada. That is why I put it forward. I do not think people in other jurisdictions should have the same right as Ontario citizens to demand of the government a degree of information that Ontario citizens should. That is what it is.

Mr. Chairman: The government has rejected it.

Hon. Mr. Scott: The reason is that for generations, it has been a fundamental precept of our law in Canada that if you are physically within the country, you get access to the benefits of the law of the country. That is what the Charter of Rights is all about. That is why refugees can apply under the charter. I would allow anybody to apply for access to information. They may have to pay the cost of collecting it, but I do not think we should restrict their right to ask for it.

Mr. Martel: In the north, we frequently have mines that are developed by Americans. We have a good number of American citizens in our communities who have lived there for 10 or 15 years. I worry about that because this excludes them except if they take some devious route to get it or through some--what did you call it?

Mr. Chairman: They could hire a Canadian lawyer, an Ontario lawyer, to get the information for them.

Mr. Turner: Or they could go to your office.

Mr. Chairman: Are you supporting it or not?

Mr. Martel: I would like to get a clarification if I could.

Mr. Chairman: Do you want to set it aside so you can have a vote?

Mr. Martel: Yes, if I could, just for clarification, to make certain it includes landed immigrants.

Mr. Chairman: Okay.

Mr. Martel: Can we just be certain of that?

Mr. Chairman: All right.

Mr. Martel: You might well be right.

Mr. Chairman: The next proposed amendment is Mr. O'Connor's amendment that section 11 of the bill be struck out and the following substituted therefor:

"11(1) Despite any other provision of this act, a head shall disclose any record to the public or the persons affected as soon as practicable if,

"(a) the head has reasonable and probable grounds to believe that it is in the public interest to do so for reasons of public health or public safety or to protect the environment; and

"(b) the public interest in its immediate disclosure clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of, interference with contractual or other negotiations of or rights to personal privacy of any person or persons to whom the information relates.

"(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

"(3) The notice shall contain,

"(a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;

"(b) a description of the contents of the record or part that relate to the person; and

"(c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head.

"(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed."

Mr. Chairman: The government's position on it?

Hon. Mr. Scott: I would be interested in hearing the views of the committee. Let me tell you the way we look at it now. Section 11 is in the nature of an emergency disclosure provision. It is designed to say, no matter what the rest of the act says, a head shall, as soon as practicable, immediately disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe it is in the public interest to do so and that the record reveals a grave environmental health or safety hazard to the public.

What it is designed to do is impose an obligation on a public servant, where there is information about a grave environmental health or safety hazard, to release that immediately so that if someone in the government service gets information that there is going to be an explosion at General Motors which will destroy half of Oshawa, that information goes bang out--no holdups; it goes right out. The business community and other people who made presentations said, "Before the government releases that information, it should give notice." As I take it, Mr. O'Connor's proposal is designed to fortify that submission, that before you release that information about the grave environmental health or safety hazard, there should be notice to the owner of the information, who will try to argue that it is not a grave or environmental hazard.

Mr. O'Connor: Hang on. That is misstating my position, and perhaps I should be allowed to state it fairly.

Hon. Mr. Scott: No. I am quite interested in your proposition.

Mr. O'Connor: The proposition as set out by my amendment would preserve what is now in section 11; that is, if there is a grave environmental danger or a health or safety hazard to the public. It is set out in clause (b) of subsection 11(1): "The public interest in its immediate disclosure clearly outweighs the importance of any financial loss...."

Hon. Mr. Scott: But that changes it.

Mr. O'Connor: In the circumstances you described about an imminent explosion, that would clearly be the case; then they could go ahead and reveal that to the public, notwithstanding subsections 2 and 3 which require, where practicable only, that you give notice and gives the opportunity to the other side to make a case for not disclosing it because it might do them some damage and financial loss or gain or prejudice.

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Hon. Mr. Scott: I suggest this--

Mr. O'Connor: Your position is preserved as set out under section 11 while in those circumstances where the danger is not as great and as magnanimous as you have indicated, there is an opportunity to give notice to the other side. In the vast majority of cases, there will not be the severe case of an imminent explosion; you are always wont to state the most severe case to make your case here before the committee, and I recognize that, but that is not always going to be the case. The vast majority of cases are going to be such that perhaps notice can be given to the people involved with an opportunity to step in and perhaps alleviate the situation. In some cases, it may be helpful to give notice to the person in charge of the situation. He may have more knowledge of how to prevent that explosion or how to prevent that imminent disaster because of his knowledge of the situation.

Mr. Chairman: Okay. It does sound as if you want to pursue it.

Mr. O'Connor: Yes, I do.

Mr. Chairman: The government is prepared to consider it; so that is a matter we will set aside and have a vote on.

Hon. Mr. Scott: I can tell my friend at the moment that while we could consider subsections 2, 3 and 4, which is notice if practicable, I do not think we could consider clause (b), which is designed to reduce grave environmental health or safety hazards to a weighing exercise. But there we are.

Mr. Chairman: Okay. So we will set that one aside and we will have a vote on it.

Mr. Martel: The wording that bothers me in section 11 is "grave."
Can I ask the minister--

Mr. Chairman: If you would let me pursue Ms. Gigantes's next amendment--

Mr. Martel: Okay. I just thought you wanted to deal with the same thing.

Mr. Chairman: Ms. Gigantes has proposed that section 11 of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "a grave" in the fifth line and inserting in lieu thereof "an."

This is a related matter. It seems to me Mr. O'Connor's definition has gone--

Hon. Mr. Scott: The problem as far as the government is concerned here is that if you took "grave" out, we would undoubtedly have to accept Mr. O'Connor's amendment, because it would mean that any hazard, no matter how trivial, would then force release of the information. If you are going to allow the dissemination of the information immediately, without notice--that is, if you are going to reject Mr. O'Connor's type of control--then it seems to me you have to pose some test like "grave." There may be words other than "grave" that serve the same purpose.

Mr. Martel: Let us look at a health or safety issue in the field of occupational health. Unless you have an epidemic of mass proportions, then we can allow people to drop off, one at a time, as we did in Elliot Lake. It is not grave until you can prove that it is there; then it is only one guy dying. The whole field of occupational health is rife with this nonsense that people are not entitled to the information about the stuff that is killing them.

Mr. Chairman: It sounds to me like you want to pursue this one.

Hon. Mr. Scott: But that information will be out anyway. This is a special power that permits the release of information without the owner of the information having anything to say about it. Therefore, it is a special special power in which there is no protection for the owner of the information. Otherwise, he would have sections 11 through 18 to argue about. What we say is that special power in which we just ride roughshod over the owner's rights should be exercised when the hazard is a serious hazard, not when it is a trivial hazard. We are looking for a word to encapsulate that.

Mr. Warner: I really appreciate the debate side of all this, but somehow the minister is suggesting that if we remove the word "grave," suddenly it becomes trivial. I do not know how you put "trivial" and "hazard" together. I do not know of a trivial hazard.

Mr. Chairman: It sounds to me like you want to pursue this; is that right?

Hon. Mr. Scott: We will certainly have to buy Mr. O'Connor's amendments.

Mr. Warner: It is a qualifier.

Mr. Sterling: When you are dealing with section 11, the key part of this is that it is an obligation to disclose without a request for access. You are not talking about somebody asking about industrial disease or anything of that nature or the fact that there is mounting evidence of industrial disease where there would naturally flow questions about the problem that was arising. The section is put there to basically obligate and put at a legal disadvantage the government if it does not reveal an imminent, grave problem. That is really what we are talking about.

Because of the confusion of one of the groups that came here, I wonder whether that particular section, whatever form it finally resolves itself into, should have a separate heading and be placed before section 10. I think it probably would fit better there so that it will not be confused with the requests--

Mr. Chairman: I now have two amendments that will go on for section 11. The government may heed your advice and add a third one in that area.

Ms. Gigantes has moved the proposal on subsection 12(1), that the bill be amended by striking out "shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an executive council or its committees" in the first, second and third lines and inserting in lieu thereof "may refuse to disclose a record," and by adding at the end "where the disclosure would reveal the substance of deliberations of an executive council or its committees."

Hon. Mr. Scott: I do not know what is intended by this and why it is proposed, so I cannot respond to it.

Mr. Chairman: Are you interested in pursuing this, Mr. Martel?

Mr. Martel: I talked to Evelyn about this. The concern is that we know cabinet has to keep some of its material because it cannot become public. I do not think anyone is foolish enough to believe that we are going to give over everything.

Interjection: It gives you a little more latitude.

Hon. Mr. Scott: It gives us more latitude the way it is now. I presume Ms. Gigantes's amendment to institute "may" will not get any more information out, but is perhaps designed because later on she has amendments that will permit the commissioner to override where there is a "may" situation. That may be why she put it in.

Mr. Sterling: I have comments on this section, and I have an amendment that you will be considering later.

Mr. Chairman: We will let this one stand for a vote.

Let us go on to the next one. This is a government amendment that clause 12(1)(b) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "proposals" in the first line and inserting in lieu thereof "policy options." Is there any argument about this?

Hon. Mr. Scott: This reads with clause 12(1)(c), which is the next amendment. Perhaps you can remind me how it works.

Mr. McCann: Yes, Minister.

Hon. Mr. Scott: Remind me why I did this.

Mr. McCann: The amendment attempts to clarify the relationship between clause 12(1)(b) and clause 12(1)(c). First of all, if we move to clause 12(1)(c), you will remember that there was a discussion this morning revolving around the words at the end of that clause, which are very important, before those decisions are made and implemented. Putting it as simply as possible, clause 12(1)(c) says that background documents, documents that are a background to a cabinet submission, have to be disclosed after a decision has been made and implemented. If we step back to clause 12(1)(b), it is concerned with the actual cabinet submission documents, the documents that propose the policy options and make the recommendation to cabinet.

The government's policy, as exemplified in the amendments, is that the documents containing the policy options and recommendations should not be subject to disclosure for the reasons we discussed this morning. Clause (c) should then go on to say that all those background documents that are not within clause (b) are disclosable after a decision has been made and implemented.

Mr. Chairman: He does not know either.

Hon. Mr. Scott: You will remember that is what we discussed this morning. You divide the issue into two considerations. One is the background stuff, and that all goes out when the decision is taken. Two is the policy submission, and that does not go out until the time expires.

Mr. Chairman: Is there any problem with this?

Mr. Martel: That sounds like an American bill. If there is anything you do not want to reveal, you just put a hanger-on and it kills everything else because that hanger-on is there and that is how you do not present any documents.

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Mr. Chairman: Mr. Sterling, do you have a problem with this amendment?

Mr. Sterling: I am like the Attorney General. As my friend would say, I am from Missouri on this one.

Mr. Chairman: Is it agreed this would carry or do you want to have a debate on it?

Hon. Mr. Scott: It is worth looking at now, if we have a chance. It is really designed to deal with the issue Mr. Sterling raised and which we dealt with this morning. That is, a policy submission to cabinet will not be released except under the 20-year rule. Any background material will be released when the decision is taken or effected. It separates the policy submission from the background to the policy submission, the latter of which goes out. If there is doubt, if the government says, "This is a policy submission, not background," and you say it is background, then the commissioner decides whether it is background or a policy submission.

Mr. Chairman: Are you in agreement with this?

Mr. Sterling: I do not think I have much objection to this.

Mr. Chairman: The next one is also a government amendment that clause 12(1)(c) of the bill, as reprinted, be amended by striking out "containing background explanations, analyses of problems or policy options" in the first and second lines and inserting in lieu thereof "that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems."

Hon. Mr. Scott: That is the other side of this, the flip side.

Mr. Chairman: This is the subsequent amendment. Are we in agreement with this? Okay.

The next one I have is a proposal from Ms. Gigantes that clause 12(1)(c) of the bill, as reprinted, be amended by striking out "and implemented" in the fifth and sixth lines.

Hon. Mr. Scott: The issue here, and the reason we oppose the amendment, is that the disclosure is going to occur when the decision is made and implemented. That is referring to two different times and they both have to be complied with. A decision to do something can be made. Its implementation may be postponed. It seems to me the government should not be obliged to reveal the information until the decision has been implemented.

Mr. Chairman: Are there problems with this?

Hon. Mr. Scot: Yesterday the cabinet may have decided that on September 1, we are going to announce a program to build a hospital in Scarborough-Ellesmere. We have made that decision; we have decided to announce

it, Mr. Warner, on September 15, your birthday. We should not be obliged to disclose the information on it until we have begun to implement it, which we do by announcing to the public that we are going to do it. Otherwise, what the government is basically saying is that when it makes a decision, it should get the right to determine the timing of implementation before information goes out about that decision.

Mr. Martel: You are not telling me seriously that government abides by that. God, it announces the same policy seven times over. Do not come around here and kid the troops. You announce policies and reannounce and rerun them 27 times before you even start to implement anything. Who are you trying to kid?

Interjection.

Mr. Martel: No, you are right. God help me. Does that restrict you then to not announce it until you are prepared to implement?

Hon. Mr. Scott: No.

Mr. Martel: That is right. It is a one-way street.

Mr. Sterling: I think I have problems with this one.

Mr. Chairman: Do you want to pursue this?

Mr. Sterling: Yes, we are going to pursue it as well.

Mr. Chairman: Okay. We will set that aside.

Mr. Sterling: He has convinced me.

Hon. Mr. Scott: Could I just give my friends an example that has just been given to me? If you decide today to introduce a bill next Monday, should you be able to get the studies on which the bill is based when the bill is introduced or today? We say, when the bill is introduced, when the decision is implemented. That is just an example. She would make that impossible.

Mr. Chairman: Ms. Gigantes proposes that 12(2)(a) of the bill be amended by striking out "20" and inserting in lieu thereof "10." Again, this is a time restraint going from 20 years to 10.

Hon. Mr. Scott: I say 20 is the appropriate time and a standard time. I must say I am sympathetic to 10, because we would get out a lot more Conservative documents.

Mr. Warner: Are you kidding?

Hon. Mr. Scott: There is a lot to be said for getting a lot of that Davis and Robarts stuff out. But on balance, in justice to the system--we are creating a system--I would prefer 20.

Mr. Martel: How about 20 in the other one then? Be consistent.

Mr. Warner: How about one?

Mr. Chairman: Mr. Sterling, do you have any comments on this amendment?

Mr. Sterling: We will consider this one.

Mr. Chairman: Okay. We will set that aside.

Hon. Mr. Scott: If you pick 10, you are going to be releasing information that will relate to a cabinet officer who may still be in cabinet. If you pick 20, you are not. That is the fact.

Mr. Chairman: Ms. Gigantes has proposed that section 12 of the bill be amended by adding thereto the following subsection:

"3. Subsection 1 does not apply to a record where the public interest in its disclosure outweighs the interest of the executive council in its continued confidentiality."

Hon. Mr. Scott: Could I just revert to the old section to remind my friends that in Manitoba, which is like Sweden around here--

Mr. Martel: Utopia.

Mr. Chairman: You visit Manitoba; I will go to Sweden. Your choice.

Hon. Mr. Scott: No. I want to tell you what happens when the NDP get into power and pass a freedom of information act. They do not pick 10. They do not pick 20. They pick 30. Nobody who was around is going to be alive when their stuff comes out. It is 30 in Manitoba. Put that in your pipe and smoke it.

Mr. Chairman: Our freedom of information act is still going through the shredder.

Hon. Mr. Scott: We want, at all cost, to be more progressive than Manitoba. We have pay equity in the private sector. We have a 20-year disclosure rule. We are way ahead of them.

Mr. Chairman: I have an amendment proposed on 12(3) adding subsection 1 does not apply to a record where the public interest in its disclosure outweighs the interests of the executive council.

Mr. Martel: This is a key one. This will be a fight.

Mr. Chairman: Mr. Sterling?

Mr. Sterling: We will watch the contractions here.

Hon. Mr. Scott: The issue is, should the commissioner be able to overrule a decision of cabinet with respect to the refusal to disclose cabinet records. Obviously not. You are either going to have an automatic disclosure rule of 20 years or you are not.

By the way, while we are on the subject of Manitoba, Manitoba passed a freedom of information act two and half years ago and has never proclaimed it. That is interesting. They have the act. They have been through two elections trumpeting the act and not a single document has ever been released to any member of the public under the NDP plan.

Mr. Warner: It could be that nobody has ever asked.

Mr. Martel: With this act in place, nobody is going to get any information anyway. They will not understand it. Even that you keep from us.

Hon. Mr. Scott: No. I have announced it.

Mr. Martel: If you have announced it---

Hon. Mr. Scott: The only difference is that in Manitoba the government is not taking any chances that you will get any information.

Mr. Martel: They will be there in 20 years too.

Hon. Mr. Scott: It is just not proclaiming the act.

Mr. Chairman: I am pleased to announce that the Attorney General has driven the Tories on side. This amendment will now carry. It was going to lose until the plug got overwrought.

Interjection: Boy, are you a big help.

Mr. Chairman: Keep at it.

The next one I have is section 13(1), "I move that subsection 13(1) of the bill be amended by inserting after 'recommendations' in the second line 'to a minister of the crown.'"

Hon. Mr. Scott: The problem with this is that it restricts the section. We will be dealing here not only with ministries but lots of government institutions. If you restrict recommendations to a minister of the crown, you will exclude recommendations to the chairman of the board of Ontario Hydro.

Mr. Warner: Why?

Hon. Mr. Scott: Because you are putting in the words "to a minister of the crown."

Mr. Chairman: Evelyn's proposal would mean that only recommendations made to a minister would be available. As it is now worded, it is broader than that.

Mr. Martel: No, it does not.

Hon. Mr. Scott: Yes, it does.

Mr. Martel: It says, "would reveal advice or recommendations of a minister of the crown, of a public servant," because she says after the word "recommendations," so she is not restricting it to a minister of the crown.

Hon. Mr. Scott: But a person in Hydro giving a recommendation to the chairman of the board of Hydro will not be giving a recommendation to a minister of the crown, he will be giving it to the chairman of Hydro.

Mr. Martel: But the chairman of Hydro then gives the recommendation to the Minister of Energy (Mr. Kerrio), who would pursue it.

Hon. Mr. Scott: He may not.

Mr. Martel: Come on, who brings the stuff forward?

Mr. Sterling: Whose amendment is this?

Interjection: Evelyn's.

Mr. Sterling: It looks like a government amendment. That is why I was thrown off.

Hon. Mr. Scott: It certainly restricts disclosure.

Mr. Chairman: Shall we set this one aside and have a vote on it?

Mr. Sterling: We cannot go through without looking at them in some degree. All this rhetoric is going on and nobody is paying any attention to what the real facts are.

Mr. Martel: Help us, Norman. I will listen to you.

Mr. Warner: Just turn it right side up first.

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Mr. Martel: Tell me how it is restrictive.

Mr. Chairman: We can set that aside and have a vote on it later.

Mr. Warner: We will leave it in.

Mr. Martel: I have difficulty with what the Attorney General is saying.

Hon. Mr. Scott: I may have read it wrong.

Mr. Martel: "Would reveal advice or recommendations"--let me put the initials in for a moment--"(a) to a minister of the crown, (b) of a public servant, or (c) any other person employed in the service of an institution or a consultant."

Hon. Mr. Scott: I think I have read it wrong. What it says is that any advice or recommendations that are made within the department will only be exempt from disclosure if they are made to a minister of the crown. That is to say that advice or recommendations made to a deputy minister would be required to be produced because they were not made to a minister. It seems to me that her restriction is an important one that we have some difficulty with. The protection that is given to public servants in making their advice would shrink considerably if her amendment was adopted.

Mr. Chairman: We will set that aside.

Mr. Warner: What I am suggesting, when you set it aside--

Mr. Chairman: By that I mean we will have a vote on that matter and a debate.

Mr. Warner: With respect, I am trying to make a point. I think there is a wording problem. When we come back to it, the consideration should be in terms of what Elie has mentioned, not the precise wording that Evelyn has left with us.

Mr. Chairman: So you may want to change the proposal.

Mr. Warner: Change the actual wording, because there has been some confusion.

Mr. Chairman: Yes, you are free to do that. That is fine.

The next one is subsection 13(3). Ms. Gigantes has moved that subsection 13(3) of the bill be amended by striking out "20" and inserting "10." This is the same argument. I anticipate we will set this aside and have this argument.

Ms. Caplan: Is this what occurred in Manitoba?

Mr. Chairman: Whatever.

The next one is from Evelyn again, subsection 13(4), and she moves that section 13 of the bill as reprinted be amended by adding thereto the following subsection:

"(4) Subsection (1) does not apply to a record where the public interest in its disclosure outweighs the interest of the government or any person in its continued confidentiality."

Hon. Mr. Scott: Mr. Martel correctly points out this is one of a series of overrides that she has basically for every section.

Mr. Chairman: You are not accepting them.

Hon. Mr. Scott: We are not accepting those. If you are going to have an override, there is no point in having the rest of the section.

Mr. Chairman: Norman, do you have any comments on that?

Mr. Sterling: We are going to deal with this in section 50, are we not?

Mr. Chairman: Yes. These are the override provisions. We will set that aside.

Mr. Sterling: Is this two ways of getting at the same thing?

Mr. Chairman: Yes.

The next proposal I have is not an amendment but a suggestion that you vote against the section. I am going to deal with that as being out of order.

Mr. Martel: I will not even challenge that.

Mr. Chairman: You bet you will not.

The next one is Ms. Gigantes's proposal for clause 14(1)(c). She is moving that clause 14(1)(c) of the bill as reprinted be amended by adding at the end "investigations."

Hon. Mr. Scott: We oppose this. Again, it is an effort to reduce law enforcement by excluding policing and restrict it to investigations, which we dealt with earlier.

Mr. Chairman: That is right. Mr. Martel, you do not want to pursue that, or do you?

Mr. Martel: When we decide the one, I think the rest will just fall into line.

Mr. Chairman: Clause 14(1)(d) is the next one, that the clause be struck out and the following substituted therefor:

"(d) Disclose the identity of a source of information in respect of a law enforcement investigation or disclose information in respect of a law enforcement investigation furnished only by that source where in either case the disclosure would unfairly expose the source to civil liability or place the health or safety of the source at risk."

Hon. Mr. Scott: The issue here is whether there should be an exemption if it is going to breach the confidentiality of the source, as we say, "dry up your source," or whether it should be an exemption only if the source is going to be sued or exposed to some health or safety risk. One of the reasons we want the exemption is that we want to use these sources. So I have some difficulty with the proposal.

Mr. Martel: Do you think it would dry up your sources?

Hon. Mr. Scott: They would be gone, because the name of the source or the information as to who the source was would be released unless the source were going to be sued--well, the source is not going to be sued--or unless the source's life or safety were at risk. What is going to happen is that the source is simply not going to be trusted any more by people who provide him with information. His legs are not going to be broken.

Mr. Martel: No more cement boots.

Mr. Chairman: Do you want to pursue this? Is this in the category of the one we just dealt with?

Hon. Mr. Scott: Pretty well.

Mr. Martel: Yes.

Mr. Chairman: Next, Ms. Gigantes proposes to move that clause 14(1)(g) of the bill, as reprinted, be struck out and the following substituted therefor: "(g) reveal information gathered for a law enforcement investigation."

Hon. Mr. Scott: This is the same thing. She wants to remove intelligence information operations of the type I described earlier and restrict it to law enforcement investigations.

Mr. Chairman: Does it fall in the same category, Mr. Martel?

Mr. Martel: Worse.

Mr. Warner: It is slightly different.

Mr. Chairman: Do you want to set this aside now?

Mr. Martel: Split them. Let us set it aside.

Mr. Chairman: I would rule the next one is out of order--you do not put amendments recommending defeating clauses--and we have another and another. The next one I have that is in order reads:

"I move that clause 14(1)(1) of the bill, as reprinted...be amended by striking out 'offence or hamper the control of crime' and inserting in lieu thereof 'unlawful act.'"

Roughly, this falls into the same category. I would anticipate the government would not be supportive of it.

Hon. Mr. Scott: The problem, frankly, is that we do not know what is intended, but I think it is within the same category.

Mr. Chairman: Mr. Martel, do you want to pursue this one?

Mr. Martel: I will check it out. No. Wait a second.

Mr. Warner: We are racing through this thing.

Mr. Martel: Let me go back to a couple of them. I would like some information. Clauses (j), (k) and (l), I suggest to you, are rather silly; I do not even know why they are in the act.

Mr. Chairman: Then you can vote against them.

Mr. Martel: The point is that maybe the minister would want to drop them. Who the hell would be seeking information that is going to "facilitate the escape from custody of a person who is under lawful detention" or "jeopardize the security of a centre for lawful detention"? Maybe somebody could explain to me what the hell those mean.

Hon. Mr. Scott: What you are saying here, if you look at the section, is that all information shall be released unless it has one of these effects, and what we are saying is that it should not be released if it is going to jeopardize the security of an institution.

Mr. Martel: "Facilitate the escape from custody...."

Hon. Mr. Scott: Or facilitate the escape from custody.

Mr. Martel: Come on. Give me an example.

Hon. Mr. Scott: For example, there is not a prisoner seeking to escape from an institution--and prisoners in institutions are entitled to apply for access for information--who would not want to get the blueprints of the institution.

Mr. Martel: We are not going to tell him where the key is, though. Come on.

Hon. Mr. Scott: No. But are you going to give him the blueprints to the institution?

Mr. Martel: Come on.

Hon. Mr. Scott: Are you going to give him the plan for the wiring system of the institution?

Mr. Martel: I told you; I would give him the key if he wanted it that badly. That is what is so silly about it.

Hon. Mr. Scott: But you see, you really would not give him the key.

Mr. Martel: That is what you are saying: you are going to give him the blueprint.

Hon. Mr. Scott: You would raise hell at question period if we did that.

Mr. Chairman: This has been one of the problems in the American jurisdiction. Public information such as the blueprints of penal institutions has been released and subsequently used by those of less wonderful character.

Mr. Martel: Anybody who would release that information is an oddball.

Hon. Mr. Scott: But you see, it is not a question that nobody would release it. In a freedom of information act, if you not going to release it, you have got to have a power that authorizes you not to release it. That is what this power is.

When an inmate of a prison says, "I am planning on effecting my release next month, but in order to do so, I would like to have the plans for the electrical system so that I will be able to cut the alarms," we will be able to say, "The freedom of information act does not permit us to give that information."

Mr. Martel: That is taking it from the ridiculous to the sublime.

Hon. Mr. Scott: You very frankly say you would give him the key.

Mr. Martel: That is what you are suggesting. Would anybody ask for that kind of information? Come on.

Mr. Warner: Essentially, you have restricted all information. This is exactly--

Interjections.

Mr. Warner: There are no exclusions.

Mr. Martel: The hour is getting late, but it is getting light.

Mr. Warner: This is exactly what the police want. Absolutely.

Hon. Mr. Scott: Being responsible for these things does focus your mind.

Mr. Chairman: The next proposed amendment I have is to clause 14(2)(a). Here, Ms. Gigantes is moving that "clause 14(2)(a) of the bill...be amended by striking out 'law enforcement, inspections or investigations' in the first and second lines and inserting in lieu thereof 'a law enforcement investigation.'"

Hon. Mr. Scott: That is the same issue we have dealt with several times.

Mr. Chairman: Mr. Martel, do you want to set this one aside?

Mr. Martel: When we do one, the others will follow.

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Mr. Chairman: The next one is that "clause 14(2)(c) of the bill be amended by inserting after 'to' in the second line 'unfairly.'"

Hon. Mr. Scott: I do not know what this means. She is changing it to read, "A head may refuse to disclose a record that is a law enforcement record where the disclosure" of the record "could reasonably be expected to unfairly expose the author of the record to civil liability."

The test we have is if the author of the record is going to be sued, if it is released, then you will not be obliged to release it. She says "unfairly sued." I am not quite sure what it means to be unfairly sued.

Mr. Chairman: That is when I sue you.

Hon. Mr. Scott: When I sue you, it is fairly; is that it?

If she used an expression such as "unsuccessfully sued," I would understand perhaps what she intended, but to say "unfairly sued"--

Mr. Chairman: The next proposal is that section 14 of the bill be amended by adding thereto the following subsection:

"(3a) Where a head refuses to confirm or deny the existence of a record, the person who made the request may appeal to the commissioner for a review of the head's decision."

Again, this is a kind of override provision. You may consider it to have been dealt with in other sections.

Hon. Mr. Scott: It is really dealt with in section 46, I am told, where it says the head may appeal any decision. I think this is unnecessary. It is in 46.

Mr. Chairman: Mr. Martel, do you want to pursue this one? There is another section where you could deal with it.

Mr. Martel: Let me get it in whack here.

Mr. Warner: What has she done?

Mr. Chairman: In 14(3a) she is putting in an override provision. There are other parts of the bill where you have a general override of the appeals to the commission.

Mr. Warner: There is a separate appeal section.

Mr. Chairman: Yes.

Mr. Martel: This is the one we talked about yesterday.

Mr. Chairman: She has inserted override provisions in different sections of the act as opposed to the general one.

Hon. Mr. Scott: This is a rather different override, though. The overrides are ones that say the commissioner, no matter what the act says, can decide it on his own, weighing the public interest. This really says that where the head refuses to confirm, there will be an appeal to the commissioner. But there is already an appeal to the commissioner under section 46, which says any decision of a head may be appealed. If you can appeal any decision of the head under 46, I do not think you need an appeal for a special decision of the head.

Mr. Warner: Except that--

Mr. Chairman: If you want, we can leave it in and go through it.

Mr. Warner: Do you classify it as a decision when a person simply is not even confirming whether or not a record exists?

Hon. Mr. Scott: Sure. A person is given a decision.

Mr. Warner: That is different from making a decision. I think that is what the minister is saying.

Mr. Chairman: Do you want it in or do you want to drop it?

Mr. Martel: That is a case where you would not tell them there was a floor plan for the institution. Do you want to deny or confirm it?

Mr. Chairman: Do you want it in or not?

Mr. Martel: Do you bring in section 46?

Hon. Mr. Scott: Section 46 says you can appeal any decision of a head. The law is perfectly clear that the refusal of a head to make a decision that you want is a decision, no matter how he couches it. He cannot refuse to make a decision by saying, "I am going to hurt you by this; so I am not going to be able to make any decision." If he does not act, he has decided against it.

Mr. Warner: If I ask him if there is a record and he does not give me an answer, that is a decision?

Hon. Mr. Scott: He has still made a decision.

Mr. Warner: Okay. Strike it.

Mr. Chairman: Strike it?

Mr. Warner: Yes.

Mr. Chairman: The next one is on 14(5), to be amended by adding thereto the following subsection:

"(5) Despite subsections (1) and (2), a head shall disclose a record described in subsection (1) or (2) if the head has reasonable grounds to believe that it is in the public interest to do so because,

"(a) the record reveals that the scope of a law enforcement investigation has exceeded the limits imposed by law;

"(b) the record reveals the use of illegal law enforcement techniques or procedures;

"(c) the record contains a general outline of the structure and programs of a law enforcement agency;

"(d) the record is a report on the degree of success achieved in a law enforcement program or programs, whether or not the report includes statistical analysis; or

"(e) the record is a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who was the subject of the investigation."

Hon. Mr. Scott: The intent of this section essentially--I am summarizing--is to force the release, regardless of what is in the document, of any information that is obtained as a result of an illegal investigation. That presents a problem because the method of determining whether an investigation is illegal under our law is the trial itself in which the judge at the trial decides whether there is illegality in the investigative technique. For example, if I approach an accused and seek to get a statement or confession from him, I may be able to do that in a legal way or in an illegal way. The judge will decide whether the confession is information legally or illegally obtained.

What is proposed here is that the commissioner will decide the same kind of issues and presumably he will be asked to decide that in advance of the trial. That is, what will happen is that the accused's lawyer will seek access to information and ask the commissioner to determine that the information is illegally obtained so that he can get the statement. If the commissioner determines that it is illegally obtained, and the judge at trial says it is not illegally obtained, you have obviously created a mess of major proportions.

I propose that the commissioner should not be turned into an official designed to decide whether investigations are legal or illegal. That is for the normal courts, and the courts should continue to decide that.

Mr. Martel: But there have been some very serious problems. My own colleagues and I, on more than one occasion, have had our records snatched, I am told, and trying to get them out was like trying to get into the Lubyanka prison in Russia.

Hon. Mr. Scott: No. I have not made myself clear.

Mr. Martel: No, you have not.

Hon. Mr. Scott: The act is designed to provide a determination according to objective standards as to whether the information will be released or not. That is to say, the nature of the information examined by the commissioner is going to be the guide as to whether it will be released or not; it is confidential or it is not; it is cabinet or it is not. The commissioner focuses on the nature of the information before deciding it goes out or stays in.

This is a new focus which has nothing to do with the nature of the information. It has to do with whether the information is obtained in a way the commissioner regards as illegal. That is going to be utilized primarily in criminal cases--accused persons seeking to get information in the hands of the

Attorney General's ministry. They will argue that the information was illegally obtained and instead of having that issue determined as it now is by a trial judge before the information is handed over, it will now be determined by the commissioner. All I am saying is that I think there is grave doubt about whether you want this commissioner to perform that kind of function.

Mr. Martel: Okay. But let me go back to the point I was trying to make. What happens if you cannot get the government of the day or someone else to move on that? I suspect that is the reason for this move. One only has to look at the shenanigans that went on at the federal level for five or six years as they pertained to the Parti Québécois and some of the shenanigans that led to the inquiry with respect to the way the Mounties were playing games federally. There was no way that you could get the government of the day to move on that. In Ontario, I am not sure if we ever got an investigation into the headquarters of the New Democratic Party being busted into and the records stolen.

1650

Hon. Mr. Scott: It seems like an idle exercise.

Mr. Martel: That might be the case, but you are in power because we were there; so you had better appreciate that.

Hon. Mr. Scott: We raised the NDP's popularity.

Mr. Martel: It is not what you did, it is what we did that put you there. The point I make, though, is that those things were never thoroughly or properly aired at the time they occurred.

Hon. Mr. Scott: I am very sympathetic to any technique that can be devised to control the activities of police and to restrict them to lawful activities or to control unlawful activities on the part of any public servant; I do not think the police alone are a matter of concern. It does not seem to me that a freedom of information act is a mechanism that is suited to this purpose, because what you are doing is saying to government that the fact this has originally been purloined allows it to go out. You do not focus on the information itself. You focus on the manner.

Mr. Warner: I think this particular line is extremely important.

Mr. Chairman: Then you want to set this aside for a vote?

Mr. Warner: Yes, and if you would allow me 30 seconds or thereabouts, I would say to the Attorney General that the scary part as it now exists is that government can be in receipt of information which, if used, could have prosecuted the RCMP for its illegal acts. If a government chooses not to use that information, there is a good chance that no one else will have that information and be able to proceed in court. This would allow the opportunity for ordinary citizens to obtain the necessary documents where a government was unwilling to move on the information which they alone have.

Hon. Mr. Scott: The way this is going to be used is in connection with police investigations. You are absolutely right. A person who is charged with an offence, instead of going to court and asking for disclosure, is going to come to the freedom of information act and the freedom of information commissioner is going to say, "Look, you cannot have that because that is investigative work that is available only to be revealed in the normal way

through the court process." He is going to say, relying on this amendment, "No, if I can show that the police acted illegally, as I would have to show at a trial, I can get it early." What you are going to have is a part of the trial process which now occurs under the Charter of Rights conducted in the commissioner's office and conducted later at the trial, and you may get two different results. A trial judge under the charter is entitled to exclude information.

Interjection: What are the words in the charter?

Hon. Mr. Scott: Improperly obtained. And the trial judge looks at evidence that is being tendered to determine whether it should be excluded. What you are doing here is building the same function into the commissioner's job.

Mr. Martel: Because we have not been able to get it in the past. It is as simple as that. That is why it is built in. We could not get it before. You know it and I know it. What other route is left to the public then?

Hon. Mr. Scott: I do not think that it is really always helpful to try to create a system that is structured entirely on anecdotal experience. I think you have to look at what the system you are creating is going to do to other existing systems that have similar functions. I do not think there is anybody here who would want to alter the criminal process or the rights that have been created by the charter to protect the criminal process and the rights of the accused. What I am saying is that if you are giving this power which is the judge's charter power to a commissioner, you are doing something that is quite extraordinary and where you may create different results. It is not something we have not thought about.

Mr. Chairman: Normie, do you have any comments on this one?

Interjection.

Mr. Chairman: This is one that will be set aside, and the question will be put.

The next one I have is a proposal to amend section 14 by adding thereto the following subsection:

"(6) Subsections (1) and (2) do not apply to a record where the public interest in its disclosure outweighs the interest of any person, group of persons, organization or institution in its continued confidentiality."

Mr. Warner: That is an override.

Hon. Mr. Scott: The next two are overrides as well.

Mr. Chairman: The next two are to subsection 15(2). Again it is the same provision. Do you want them struck?

The next one I have is to subsection 16(2), and again it is the same override provision. Strike it?

Mr. Warner: One vote.

Mr. Chairman: The next one I have is subsection 17(1).

Mr. Warner: Whose is it?

Mr. Chairman: That I cannot tell you. I have one listed as 17(1), and I do not have a name attached to it. I believe it is Evelyn's. It reads:

"I move that subsection 17(1) of the bill, as set out in the bill...be amended by striking out 'financial or labour relations' in the third line and inserting in lieu thereof 'or financial' and by inserting after 'explicitly in the fourth line 'or labour relations information supplied to a mediator during a labour dispute by a person, group of persons or organization."

It is a fairly substantial one. Do you want to set this aside?

Mr. Martel: Yes. There is some concern about that. I read the presentation of the Ontario Public Service Employees' Union last night.

Hon. Mr. Scott: It seems to narrow the protection for trade union information. That is what I find is hard to believe.

Mr. Martel: I read OPSEU's presentation last night, and maybe I misread it, but I thought they said that thing was too wide open.

Mr. Chairman: That is one we will set aside, and we will have a vote on that. Are there any comments, Mr. Sterling?

Mr. Martel: Did you read OPSEU's presentation?

Hon. Mr. Scott: I have, but not recently.

Mr. Martel: I read it last night, and I thought they said it was too wide.

Mr. Chairman: The next one I have is again from Evelyn. It is that subsection 17(1) of the bill be amended by striking out "disclosure could reasonably be expected" to in the fourth and fifth lines and inserting in lieu thereof "head has reason to believe that the disclosure could."

Hon. Mr. Scott: We have used the expression "disclosure could reasonably be expected to" throughout the act, and Ms. Gigantes proposes to change it only here. I do not know what it is all about. She may have some reason for leaving it everywhere else and changing it here, but it does not occur to me except that it weakens the provision somewhat. I would really have to find out what she had in mind. I do not know.

Mr. Chairman: Is there agreement with that? Do you want to set that one aside?

Mr. Martel: Let us find out what she wants.

Hon. Mr. Scott: She has been busy.

Mr. Chairman: The next one is that subsection 17(3) of the bill, as reprinted to show amendments, be amended by striking out "may" in the first line and inserting in lieu thereof "shall."

Hon. Mr. Scott: I am tempted to say we agree to this, but the trouble is on reflection we say, "What do you do if there is a personal information issue at stake?" Then you would not want to require him to disclose the record.

Mr. Martel: You have had a change of heart since yesterday.

Hon. Mr. Scott: We have looked at it. We asked ourselves why "may" was put in there, and I think "may" was put in there to permit the head disclose where you have that situation but not to require him to do so in the event that there is a privacy component later on.

Mr. Martel: Let me ask you something. It says, "A head may disclose a record described in subsection (1) if the person to whom the information relates"--that is the person himself--"consents to the disclosure."

Mr. Warner: So the person is consenting.

Mr. Martel: The person has consented to the disclosure.

Mr. Warner: Why would you not disclose it?

Mr. Martel: Why should the head--

Hon. Mr. Scott: Suppose a business consents to the disclosure about a piece of information that refers to an individual. Before you simply sit around and say, "Let us turn every 'may' into 'shall,'" it seems to me you want to look at all the possible implications.

Mr. Martel: Give me them then.

Hon. Mr. Scott: That is one. Is it your intention that a business should be able to consent to the release of information that respects the privacy of an individual? I would have thought the answer to that is no, you do not want to do that. Therefore, you want to allow the head discretion; you do not want to compel him to act when he has the consent of the business.

Mr. Chairman: Do you want to pursue this, Mr. Martel? Okay. We will set that one aside.

The next one that I have I really do not have any identification on, but it is a motion to strike, and I would rule that out of order. If you want to strike it, you vote against it.

It is five o'clock, and we have gone through a fairly substantial portion of the proposed amendments. If it is your pleasure, we can adjourn now, and we will pick this up again on Monday at 10 o'clock. At that time, the additional amendments that were proposed by Mr. Sterling will also be dealt with if we are able to successfully go through that. If there are amendments that people would like to withdraw, they could assist me a lot by telling me that.

The committee adjourned at 5:02 p.m.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

MONDAY, MARCH 30, 1987

Morning Sitting



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Substitutions:

Cordiano, J. (Downsview L) for Mr. Mancini

O'Connor, T. P. (Oakville PC) for Mr. Turner

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Also taking part:

McClellan, R. A. (Bellwoods NDP)

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, March 30, 1987

The committee met at 10:10 a.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

The Acting Chairman (Mr. Warner): All right, folks. We are ready to start. The committee is called to order. Our chairman, Mr. Mike, is stuck in traffic. We hope he will be along shortly.

You will recall we left off at section 19. A government amendment, a new section 19, is being proposed. "A head may refuse to disclose a record that is subject to solicitor-client privilege."

Hon. Mr. Scott: As I said the other day, this is just to expand the coverage designed to ensure protection for solicitor-client material to crown counsel, who according to how you view the law, may or may not have a client and therefore may or may not have, technically, the benefit of solicitor-client privilege. I would not have thought the issue was contentious.

Mr. Martel: Are you talking about section 19?

Hon. Mr. Scott: Yes.

The Acting Chairman: It is a new section 19 that is being proposed by the government.

Mr. Martel: What is it in the federal jurisdiction? Is this sort of clause included in the federal legislation?

Mr. McCann: In general, in most freedom-of-information statutes, there is an exemption relating to solicitor-client material. I do not have the precise wording of the federal provision. We can get it.

Mr. Martel: I am not interested in precise wording. I am just asking whether it is similar.

Hon. Mr. Scott: Your hero Dr. Williams recommended it and I think it is found in almost every--I have never heard of a freedom-of-information act that does not have it.

Mr. Martel: Is it not the case that only lawyers want that protection?

Hon. Mr. Scott: No, it is protection for the client, not the lawyer. In any solicitor-client case, the client can direct the lawyer to release the information. The lawyer has no control over the privilege at all; it is the client. The client can say, "I am prepared to waive it."

Mr. Sterling: If a minister asks for a legal opinion and the legal opinion is given by the Attorney General, usually that document resides with the director of legal services for that particular ministry. That director actually is an employee of the Attorney General. Who owns the opinion? Does the Attorney General own the opinion? Does the minister own the opinion? In other words, who is the client and who is the solicitor?

Hon. Mr. Scott: I do not think there is any issue about who--let me put it this way: I would have thought the opinion is owned by the person to whom it is given in normal circumstances. Mr. O'Connor may have a view. I think that would normally be the position outside government. That is to say, if I, as a lawyer, give an opinion to a client, the client owns the document that expresses the opinion and has a property right in that document once I have mailed him the opinion. The privilege we are discussing really is his.

In a governmental context where you do not actually pay for the opinion, I do not envisage that the situation is any different. An opinion given by the Attorney General's staff to a line ministry is, I think, the property of the ministry.

Mr. Sterling: So in the case where there would be a conflict between the Attorney General saying, "I do not want you, Mr. Minister, to release this information," and the minister feeling that it is important to release it, who wins in that circumstance?

Hon. Mr. Scott: There are two pieces of information we are talking about. First, we are talking about the information the client gave to the lawyer for the purposes of getting an opinion. Second, there is the opinion itself. The written opinion, when given, becomes the property of the ministry that sought it, the client, and when a request is made for information, the Attorney General's department will not have any interest in whether it is produced. It will be up to the client ministry to say whether it is content to produce the information it gave to the Attorney General and the opinion it got back from the Attorney General.

I would have thought that the Attorney General would not have any particular interest in that. He is the lawyer. He does not care whether it releases it. It is its information and its opinion.

Mr. Sterling: There may be some concern in terms of the fact that there may be contrary legal opinions.

Hon. Mr. Scott: I do not think so. Frankly, lawyers are not surprised if there are contrary legal opinions. That happens every day. The more complex life becomes, the more frequently it happens. The only people who are concerned about that are perhaps people who do not understand the way the process operates, that people often make different judgements about the same issues.

Mr. Sterling: Once the legal opinion was rendered, then that would be the control the Attorney General had over that particular legal opinion.

Hon. Mr. Scott: He would have no further control.

Mr. Sterling: What happens if the minister asks outside counsel for a legal opinion? Whose document is that?

Hon. Mr. Scott: It is my position that should not happen. The person

who should ask for an outside opinion is the Attorney General, not a ministry. But in the event that there are cases where that does happen from time to time, the situation is precisely the same, as I understand it. The opinion given becomes the property of the ministry.

From the point of view of the Freedom of Information and Protection of Privacy Act, as I tried to make plain last week, there is no issue as to property, as to title. That simply does not arise as a factor under the act. You serve notice on the person who has custody of the document in a physical sense. In your case, you could serve it either on the client ministry or on the Attorney General. Then, under the machinery of the act, the ministry that has the dominant interest in the subject matter takes charge of determining whether it is producible under the act.

I would have thought that, in a solicitor-client case where an opinion has been requested, almost invariably in every case the dominant ministry would be the client ministry. I can think really of almost no case where the Attorney General would be the dominant ministry.

The Acting Chairman: If it is of any help to members, to put it into perspective, you have section 19 as printed in the bill, the amendment that extends the privilege to include background information or advice, and then you have a position put forward by Ms. Gizantes simply to not have section 19, which is contrary to both of those.

1020

Hon. Mr. Scott: To be fair, Mr. Chairman, I do not think it really extends section 19; it clarifies it. The use of the words, "for use in giving legal advice or in contemplation of or for use in litigation" really adds nothing because they would be within our understanding of what a solicitor-client privilege is anyway.

The key words, and the words that clarify, are "crown counsel," because the case is made that crown counsel may not, in a highly theoretical sense, have a client. Because crown counsel has a kind of independent role that a normal lawyer does not have, a crown counsel may be thought, in a technical sense, not to have a client. The policeman is not the crown counsel's client, but as a matter of clarification it was recognized that opinions given by crown counsel should be producible or not in the same way as opinions given by any other crown lawyer.

Mr. Sterling: I guess my concern in the whole situation with regard to the Attorney General and solicitor-client relationship is the fact that the director is your employee and he sits in the offices of the Ministry of Natural Resources.

Hon. Mr. Scott: Well, that is just a convenience.

Mr. Sterling: I know it is a convenience but he has the document.

Hon. Mr. Scott: Well, he may or he may not have the document.

Mr. Sterling: He would normally have the document.

Hon. Mr. Scott: He normally, I think, would not have the document. What he would have is a yellow or blue copy or some copy paper of the document. Just as I, as a practising lawyer, would send a written opinion to

the client, the Attorney General's department or the director of legal services, even if he is not the minister, would send the opinion letter to the deputy minister or to the minister and retain in his file a flimsy copy of it. The original of the opinion goes to the client. The director of legal services in the ministry is not the client.

Mr. Martel: Is there not a problem with that, though? If there is an issue involving a ministry that gets a legal opinion from its legal department, the very nub of the issue is the advice that led to the action taken by the specific ministry which might be the source of contention to start with and the advice being given can be retained if the head decides that he does not want it disclosed. Let us say the head acted contrary to what the legal opinion was. It is an opportunity to hide from the course of action that was recommended under that guise of solicitor-client privilege.

Hon. Mr. Scott: In the way you put it, you can say, and with reason, that any exclusion at all, whether it be a law enforcement exclusion or a privacy exclusion or a solicitor and client exclusion is an opportunity to hide. It may serve that purpose, but the issue is not whether it is an opportunity to hide--every exclusion in any information bill is an opportunity to hide--but whether the exclusion is justified on some commonly recognized social virtue. In the case of the privacy, the social virtue there is: "yes, we are going to permit information to be hidden. There will be information that will not come to the attention of the public, which is dying to have it, but the social value to be protected is the value of privacy.

In law enforcement, you go through the same process. Certainly, information will not be produced, but it will not be produced precisely because we have to place a value on efficient policing. The traditional view that all freedom-of-information acts have incorporated is that, unless you ensure a measure of confidentiality, you do not get good legal advice because good legal advice is only as good as the information the client puts before the lawyer.

If you do things to discourage the client from telling the lawyer the true story, then the government does not get good legal advice. Again, the judgement is, "Yes, we exclude the information, but because we are protecting this value that is important." It is important that the government, which is spending taxpayers' money, should be able to be certain that public servants tell our lawyers the truth. We do not want to discourage public servants from telling our lawyers the truth by saying to them, "Everything you say is going to be open in a couple of days in the newspapers."

Mr. Sterling: Okay, but that same argument could be extended for the whole range of the freedom-of-information act. That is what the auditor's office says. That is what all the internal auditors say, and you go on and go on and go on.

Hon. Mr. Scott: It has never been extended in that fashion. One of the complaints is that the solicitor-client privilege is regarded as unique in our law. There are people who say the relationship between confessor and penitent or between psychiatrist and patient and so on should be protected in the same way. The law has never done that because while it regards those relationships as very important, the law attaches, rightly or wrongly, a special value to getting legal advice.

Without legal advice, people lose the capacity to assert their rights effectively in a court. It is perceived, rightly or wrongly, that at the end

f the day, when your back is against the wall, asserting your claim or defending yourself in a court is going to be your last resort and that everything should be done not to discourage your capacity to get the straight goods from your own lawyer.

Mr. Sterling: I have no problem with that, but the problem is that it does cross over in the public policy area at different times, as Mr. Martel has pointed out. I would have no trouble with this section, for instance, if it talked about solicitor-client privilege in relation to contemplated legal action or criminal cases.

Hon. Mr. Scott: Then that is not solicitor-client privilege. Solicitor-client privilege has never been restricted and could not be restricted to contemplated legal action. People take very important decisions that have nothing to do with contemplated legal action on the basis of their solicitor's advice.

In your own life, it may be that one of the most important decisions you will take will have to do with the making of your will. There is no legal action involved in any of that, and in your case and mine, where we have no money to leave, it is not going to be a big deal, I can assure you, but in the case of some very wealthy person, the question of his or her legal obligations will be very important. He will want to be in a position to put all the facts before a solicitor, including perhaps very intimate details about his relationships with his children and so on and how they have treated him and how he has treated them during life in order to get an opinion. The opinion has nothing to do with litigation but is clearly an opinion of the greatest importance to that person.

The Acting Chairman: We have had considerable discussion on this.

Mr. Sterling: It is a very important section.

The Acting Chairman: Every section is important and I gather there is not a consensus on this.

Mr. Sterling: No, that is right. I would look to some kind of limitation on this privilege.

The Acting Chairman: It is duly noted up here. Let us move on to the next, which is Ms. Gigantes's section 19. I rule that out of order.

The next one is subsection 20(2). This is a New Democratic Party motion.

Hon. Mr. Scott: This is another example of the public interest override Ms. Gigantes wants to put in a number of sections and I think what we have been doing is lumping those together.

The Acting Chairman: Yes, and there was an agreement that would be dealt with once. We understand that.

Hon. Mr. Scott: Yes.

Mr. O'Connor: Can I ask the Attorney General his general opinion as to whether he will accept all these subsections lumped together or is he intending to resist them?

Hon. Mr. Scott: I think our instinct is to resist those, Mr.

O'Connor. The issue always is whether you are going to allow the rules the Legislature has set to govern or whether you are going to allow the commissioner, in essence, or the court to ignore those rules and apply an ad hoc judgement of the commissioner's own. There may be some merit for doing that on a case-by-case basis, but if you are going to have an override on every exemption, why do we not just shorten up the bill by saying we will allow out what the commissioner says we will allow out? You could do the bill all in one section. I am really opposed to the override.

1030

Mr. O'Connor: In general that is not a bad idea. You still need the legislative guidelines for him--

Hon. Mr. Scott: But if you have the override, the guidelines disappear because the guidelines do not have the force of law. They are subject to an override, and if they are subject to an override, they in effect are guidelines that can be ignored in any case.

Mr. O'Connor: Why not? Why should not everything we do be subject to general override--

Hon. Mr. Scott: But there is no reason.

Mr. O'Connor:--if it is to have the acceptance of the public--I know we are debating it now but--

The Acting Chairman (Mr. Warner): We have had some opportunity, I suspect there will be more before this thing is over, with respect to public input.

Hon. Mr. Scott: I see no objection, though I would not support it myself, to a bill as a matter of principle that simply says there will be a commissioner who will decide on a case-by-case basis whether any documents should be allowed in or allowed out. That certainly leaves it--

Mr. O'Connor: We have got to have guidelines; we have got to have sections to tell him when he should exercise his--

Hon. Mr. Scott: But if he has an override, he can ignore those sections.

Mr. O'Connor: Maybe he should.

Hon. Mr. Scott: Then they are not guidelines.

The Acting Chairman: The next amendment placed is by Ms. Gigantes, and it likewise is out of order, clause 21(2). Similarly--

Mr. McCann: Just to be helpful, I think this is from Ms. Gigantes, is it 21(2)(b) you are referring to, Chairman?

The Acting Chairman: Yes.

Mr. McCann: This is tied to a further amendment which comes under section 21 subsection 4. The purpose of the amendment is to move this subsection from one place to another; I think it would be better debated a bit later on. It is tied in to another amendment.

The Acting Chairman: That is fair enough. All right, the next one I have in front of me is 21(2)(g), which was from Ms. Gigantes. She wishes to strike out "is unlikely to be" in the first line and insert "may not be." This one is open for discussion.

Hon. Mr. Scott: I do not know what it means, to be frank. In her absence--but it is her amendment.

Interjection: I thought you would know. It is supposed to be a brilliant law.

Hon. Mr. Scott: It does not follow that a lawyer would necessarily understand her amendments. I do not understand what it means; it seems to me it is another way of expressing the same concept--

Mr. Martel: I think it is the same thing that she has got in a number of places, that in fact, the information that is to be used must in fact be accurate if it is going to be used at all; otherwise, one cannot use it.

Hon. Mr. Scott: But they why does she insert "may not be"?

The Acting Chairman: Each person may have their own interpretation of this. I take it that it is more limiting to say "unlikely" than to say "may not."

Hon. Mr. Scott: But knowing Ms. Gigantes, I would think it was intended that her amendment would be more limiting, but I do not think it is. That is the trouble I have with it. My instinct is that she will want to cut this down and that she would come up with an amendment that will cut this down. She has come up with an amendment that does not seem to--do not repeat this outside this room--

Interjection: No, nothing we say is repeated.

Hon. Mr. Scott: Then I will stop right there.

The Acting Chairman: In a sense, it is a bit of a muddle; this is a good place for me to leave.

Hon. Mr. Scott: The acting Chairman got us through two sections.

Mr. Chairman: I want to tell you before I start, I am in a real good frame of mind this morning. The Don Valley Parkway was particularly pleasant all the way down. I am going to set up residence on it. So we are on--

Hon. Mr. Scott: You could not have left too early this morning.

Mr. Chairman: You could have camped out there this morning; it was really very nice.

Mr. Bossy: You can believe the insurance rates will go up.

Mr. Chairman: If your auto insurance is due, get it before 11 o'clock this morning because the rates are going up. They are really setting records out there today.

Hon. Mr. Scott: They should be going down; you are off the road now.

Mr. Chairman: Thank you for that. Write that down; "I owe the Attorney General one shot in the head." Okay, so you are at 21(2)(g)?

Hon. Mr. Scott: We have agreed that 21(2)(g) will have to be spoken to by the author--

Mr. Martel: Some of those we will check out when the author gets in today some time.

Hon. Mr. Scott: She is doing pay equity.

Mr. Martel: Are they sitting today?

Hon. Mr. Scott: Yes.

Mr. Chairman: What have you done with the amendment to subsection 20(2)?

Interjection.

Mr. Warner: We are now at clause 21(3)(h).

Mr. Chairman: You have certainly been very productive in my absence.

Hon. Mr. Scott: This is to put sexual orientation in with racial, ethnic origin, religious, political beliefs or associations as a presumed ground of unjustified invasion of privacy.

Mr. Chairman: Do you have any problem with this?

Hon. Mr. Scott: I have no particular problem with it.

Mr. Chairman: Again, I want to see Mr. O'Connor vote in favour of it.

Mr. O'Connor: No, Mr. Chairman. I have a question. That list of items does not include the usual list of sex, age and so forth. Should they all go in on that?

Hon. Mr. Scott: I think Mr. O'Connor's point is a good one. It does not really fit for the reason he has noted. I just went along with it because--

Mr. Chairman: I think the larger question is do we need to make this insertion in this particular bill or is other legislation all-encompassing.

Mr. Martel: (Inaudible) another section of the bill last week. It was more appropriate because it included a whole list of items.

Mr. Chairman: The interesting question is whether we need to rewrite every piece of legislation on the books or whether the one Human Rights Code adjustment covers them all.

Mr. O'Connor: My question to the committee is why his amendment does not include age, race, sex and so forth.

Hon. Mr. Scott: Let me put the purpose of the thing. You will see, if you go back to the opening words, that the purpose is to presume an invasion of privacy that will prevent disclosure of the document. If the

document discloses the following information, it will be presumed that there is an invasion of privacy and therefore, without a positive order, the document will not be released.

If you disclose a person's age and that is a presumed invasion of privacy and the document is not released, that means that motor vehicle licence information is not going to be released because it is presumed to invade privacy. If you include the sex of the applicant, it is a presumed invasion of privacy.

So I think what was attempted was to try to separate that information that was relatively neutral in the sense that it was sought from everybody in the category, such as age and sex, from that information that it was more difficult to believe could be sought without some unwritten assurance of privacy, such as racial or ethnic origin, or religious or political beliefs.

Mr. Martel: Then this really has to be the sort of material that some people would--

Mr. O'Connor: Sexual orientation.

Mr. Martel: Yes.

Hon. Mr. Scott: I have no trouble with it.

Mr. Sterling: Why is educational history an inclusion?

Mr. Chairman: What section are you referring to?

Mr. McCann: Clause 21(3)(d).

Hon. Mr. Scott: Educational history can have to do not only with educational successes but also with educational failures. The fact is that an educational history can include much information that you and I would regard as private.

Mr. O'Connor: Stephen Lewis's lack of a degree.

Mr. Chairman: Ontario student record cards.

Mr. Martel: You will see material like that in OSR cards. There is a lot of private information about the conduct of kids, the behavioural problems they might have had as youths. I do not think they would want that made public.

Mr. Sterling: I was thinking more of the academic record.

Mr. McCann: I do not think the academic record would be a problem because, normally, the individual would request the disclosure of that from the university to another or to an institution. I think the concern here is more with the kind of information Mr. Martel has mentioned, counselling and that sort of thing. There can be a fairly expansive amount of this, I gather, in an educational record and, therefore, it is akin to the employment record in that the individual would regard it as highly sensitive.

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Hon. Mr. Scott: The marks the New Democratic Party members got in economics, for example--

Mr. Chairman: Which are very high.

Hon. Mr. Scott: --would be a major embarrassment to them.

Mr. Chairman: As opposed to the Attorney General's marks in that skill, which are nonexistent.

The next one that I have is that clause 21(4)(c) of the bill be struck out and the following substituted therefor:

"(c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head."

Hon. Mr. Scott: I take it the committee sees how the thing works. It is designed to say, "Notwithstanding the above, the following does not constitute an unjustified invasion of personal privacy." What you have under clause (c) is "details of a licence or permit...conferred on an individual" under circumstances where the individual is a minute component of the group.

Mr. Warner: Procedurally, it would seem that what Ms. Gigantes wants is simply to vote against subsections 1 and 2. She wishes to leave clause (c) as it is, dropping the word "where," and vote against those two subsections.

Mr. Chairman: It is a little bit more than voting against them. There is a substitution of wording.

Mr. Warner: She is not putting in the qualifiers of the small subclauses.

Mr. Chairman: Yes.

Hon. Mr. Scott: I think the way it is designed to work is that, for example, to follow up on the racial or ethnic origin, if a grant were made by government to every new Canadian, that is, every person who had entered Canada, let us say, from Europe since the Second World War and had become a Canadian citizen, that would be information that was presumed to be an unjustified invasion of privacy under clause 3(h), because it would indicate the racial or ethnic origin of the applicant.

We take that information out of that category and assert that there is no presumption one way or the other if at least 100 other people got that benefit. We simply say that in that case, if you say it is private, make your case, but there is no presumption that it is private.

Mr. Chairman: I take it this is one you want to set aside.

Mr. Warner: Yes. I am a little curious about why you have the one per cent.

Hon. Mr. Scott: Make it 0.5 per cent.

Mr. Warner: Why?

Hon. Mr. Scott: The idea is that if the group is large, there should be no presumption one way or the other. One per cent is one way of asserting that the group is reasonably large.

Mr. Warner: Strange.

Hon. Mr. Scott: Are you going to have a presumption that there is an invasion of privacy? The theory is that there should be a presumption except when it is happening to everybody, and then there should not be a presumption. Now do you define when it is happening to everybody? You define when it is happening to everybody by saying, "If your information is only one per cent of the total." You can alter the figure any time you want, if you think the figure is too low.

Mr. Chairman: I think that is one where we would like to have an argument. We may as well put it up.

Hon. Mr. Scott: Yes.

Mr. Chairman: The next one I have is also from Ms. Gigantes. It is 21(4) adding thereto the following clause:

"(d) discloses personal information that is relevant to a fair determination of the rights affecting the person who made the request."

Mr. O'Connor: This is not a government amendment. It is an NDP motion, and I do not know what it means.

Mr. McCann: If I could take one second to explain it, I think the point of this amendment is to take that clause out of subsection 21(2) and put it into subsection 21(4). The effect of that would be that instead of being a factor for the head to consider in deciding whether to disclose personal information to someone other than the individual it concerns, it would become something that is not presumed to be an invasion of personal privacy and therefore disclosable as of right. I think that is the effect of the amendment.

The one problem that we see with it is that it would foreclose the possibility of the individual whom the information concerns getting notice and having an opportunity to resist disclosure. That is one argument in favour of keeping it in subsection 21(2) as a factor to be considered; that if it were going to be disclosed, the individual would get notice and would have a right to object.

Mr. Chairman: So do you want to set that aside?

Interjection: Well, we are reasonable.

Mr. Chairman: The next one I have is subsection 21(6) amending it to read, "Where a head refuses to confirm or deny the existence of a record, the person who made the request may appeal to the commissioner for a review of the head's decision."

Hon. Mr. Scott: We do not think this is necessary because any decision of the head can be appealed.

Mr. Chairman: This gets us back to that general argument that we have had. I think that we will have it once and be done with it, as to whether the appeal provisions are sufficient as worded or whether there is a need to put it in more.

Mr. Warner: Of course, the Attorney General might wish to consider

that if it is not necessary in his view, then it is certainly not harmful to include it.

Hon. Mr. Scott: Except that you will be aware of the principle that if you include something that is not necessary because it is included in more general language earlier, there is ample legal authority for the proposition that when you do that, you cast doubt on whether the earlier general words have the implication that you intended. So there is some risk in putting it in just on the basis that it is surplus. The courts will not be anxious to regard language in a statute as surplus. They will look for a meaning for it, and the meaning will be that the earlier words do not include it.

Mr. Chairman: If the courts ever start ruling on surplus words in statutes, we are all in dire difficulty.

Mr. Sterling: But under subsection 21(5), the head has the discretion to either disclose or not disclose and then under section 50, the review section--

Mr. Chairman: I think I am going to herd everybody into a direction on the appeal process laid out in the act and whether it is sufficient and ask you to deal with it on that occasion. I understand what is being proposed here, but I do think there is one central question that has to be decided by the committee and, depending upon which way you decide, all these amendments will either flow or cease.

Mr. Sterling: I agree with that but I think it is important for the committee, in order to decide what it is going to do with that particular section, to understand what the implications of that section may or may not be.

Hon. Mr. Scott: Let me try one more time to describe this. The sections of the act which deal with the heads of power fall into two types. The first type says that the head shall refuse to disclose if the document falls under the following categories. That means that if it falls under the categories, his hands are tied and the document does not get out.

The second category is one that says that the head may refuse to disclose if the document falls under that category. That is designed to allow the head to keep the document in just as he would have to if it said "shall" but also to allow him an additional discretionary power to let it out. So he could say: "Look, this document I could refuse to disclose and would have to if it said 'shall' but the trial took place 35 years ago. I am going to let it out." That is the distinction between "shall" and "may."

When you come to an appeal, the issue is whether you allow the commissioner to review the add-on discretionary component. That is the issue Ms. Gigantes raises. She says, "Yes, that should be reviewable by the commissioner." I say no, because that would mean the commissioner would have no rules to follow.

Mr. Sterling: And in this case, by her amendment--if I read it clearly and if I read subsection 5 correctly--you have given the discretion to the head to make a judgement call here.

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Hon. Mr. Scott: No, this amendment has nothing to do with the issue I just referred to. This amendment has to do with the sense that where a head

refused to confirm or deny, there might not be an appeal. I think we made it plain before that there is an appeal because that is, in effect, a decision.

Mr. Sterling: But in terms of the head, in making this decision under subsection 5, and notwithstanding that Ms. Gigantes opposes it in subsection 6, the discretion is totally within the hands of the minister in most cases and, therefore, he or she sees that the disclosure would constitute an unjustified invasion of personal privacy. The argument is that the commissioner does not have any call on that. Is that correct?

Hon. Mr. Scott: No.

Mr. Sterling: He is not given that discretion?

Hon. Mr. Scott: I do not understand it that way. The reason for subsection 5 is that in responding to a request for information, to deny the request and say there is such a record but you are refusing to disclose it would tell everybody exactly what they wanted to know. It could be an application for any mentioning of X's name under the records having to do with venereal disease. If the head said, "There is such a record relating to X, but I am not going to produce it," it would tell the applicant exactly what he wanted to know against the interests or the privacy of that individual.

You give the head the right to say, "I am not going to tell you whether or not the document exists," but that is absolutely appealable. That is to say, the commissioner can determine whether he should have confirmed or denied the existence of the record. The commissioner will make precisely the same decision that the head made, so subsection 6 as proposed is unnecessary.

Mr. Chairman: Can I move on? There was a proposal to add subsection 1(7), as follows:

"(7) Subsection (1) does not apply to a record where the public interest in its disclosure outweighs the interest of the individual to whom the information relates in its continued confidentiality."

Again, it seems to me that is the public interest override, and we agreed that we would withdraw all these and deal with them on one occasion.

On section 26, I have a proposal to amend section 26 "by striking out 'thirty' in the fifth line and inserting in lieu thereof 'twenty-one.'"

Hon. Mr. Scott: We are opposed to it, not because 21 days would not do in many cases but because, as you will see, it extends not only to a request that is made to a head but also to a request that is made to a head and then transferred by the head because it has been made to the wrong person and should have been made to somebody else. If you are allowing only 21 days for that transference, you are not allowing very much time.

We would prefer to pick 30 days, and then in your review in the first year or two, you can see how that process is working. On review of the act, you may indeed want to tighten up a lot of it.

Mr. Chairman: My inclination when we go through the following votes would be to pick a number of days and stick with that. In other words, again, to that once and, depending on how the amendments fall, proceed to do it.

Mr. O'Connor: There are varying days for varying steps. They cannot all be 30 or all 90 or whatever. We have to deal with them individually.

Mr. Warner: To make sure we are all clear, what the 30 days refers to here is after the request has been transferred to the appropriate head.

Mr. McCann: No. The 30 days in section 26 is the basic period from the date the response is received until the institution is obligated to respond to the request. The fact that it is transferred does not extend that time.

I think that becomes clear under subsection 25(4). In other words, if institution A receives it today, even if it transfers it to institution B, the requester has to get his or her response within 30 days. It is a basic period.

Hon. Mr. Scott: The issue here is not always going to be a simple one either. The request is going to come to the Attorney General, and he is going to say it is for a legal opinion, but the opinion is really the property of the Ministry of Natural Resources so you are going to send it over to MNR.

It may turn out that the file is moved on to somebody else who has another interest in it, and as you will know from the earlier parts of the act, the obligation to respond is going to be the obligation of the ministry or head who has the most dominant interest in it. They are going to have to sort out that themselves, but all that occurs in the 30-day period.

Mr. Warner: I am just going by the wording that is here. It says that if a request is forwarded or transferred, "the head...shall...within 30 days."

Hon. Mr. Scott: It begins by saying, "Where a person requests."

Mr. Warner: This is the head of the--

Hon. Mr. Scott: --the institution to which it is forwarded or transferred.

Mr. Warner: So they now have 30 days. We are suggesting that--

Hon. Mr. Scott: No. Let me put two situations to you. The first situation is that the request comes to the Ministry of the Attorney General, which is the right place, and I have 30 days to respond. In the second case, the request comes to the Ministry of the Attorney General, which is the wrong place, and I shift it around to Ministry of Natural Resources, which sends it to the Ministry of Tourism and Recreation. Tourism still has to respond within 30 days of the day I got it.

Mr. Warner: Not according to this.

Hon. Mr. Scott: Precisely according to that.

Mr. McCann: If I could direct your attention for a second to subsection 25(4), it says:

"Where a request is forwarded or transferred"--that is the transfer from one institution to another--"the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it."

If the Ministry of the Attorney General receives it today, even if it is transferred to some other ministry, it is deemed to have been received by that

other ministry on the day the Ministry of the Attorney General received it, so the 30-day period in section 26 is going to apply to the second institution as much as to the first.

Mr. Chairman: My, there is a lot of fantasy floating around this room this morning. This is never going to happen, folks. Get real.

Mr. O'Connor: In any event, whether that term is 30 days, 21 days or 00 days, if the minister or the head does not comply with the section, there is no sanction.

Mr. Chairman: What are you going to do? Are you going to go to court and sue if somebody did not give you the information in 30 days when it took him 31 days? There is a need to be realistic or somewhat practical about this. I suggest that in dealing with these amendments we try to find some reasonable period of time and adhere to that in a way that is relatively sane.

Mr. O'Connor: As well as trying to find some reasonable sanction that can be imposed on a head who disregards the act.

Mr. Chairman: We can cut off their hands or something.

Mr. O'Connor: We have already tried in section 57.

Mr. Chairman: What I am a little concerned about is that you can write this any way you want and you can say that some ministry must provide information within 30 days or the staff will be shot, but you are not going to shoot them and you know they will not provide the information within 30 days. Why do you not get real about it and propose some reasonable amount of time?

Otherwise, I suggest to you that what you are going to have is that if they have to give you a response within 27 days or 21 days, the response is going to be like written questions in Orders and Notices, "Sorry, but we cannot give you the answer in 21 days." That constitutes an answer.

Mr. Martel: The head can decide he needs some more time anyway.

Mr. Chairman: That is right.

Hon. Mr. Scott: We have a bureaucratic system that will be able to produce this within 30 days.

Mr. Chairman: You have not dealt with the Ministry of Transportation and Communications lately.

Hon. Mr. Scott: No, and it is not by any means guaranteed, but we think it is manageable within 30 days. We think it is not manageable within 1. We think it is manageable in 30, you would not want to pick 45.

Mr. Chairman: I think what we are looking for is we need to have, at some time, somebody from the government side say, "Any one of our ministries can provide this information within X number of days." That will be the number of days we put in the act, and we will stick with it. Do not lie to us and tell us you can do it in 21 days. If you cannot, give us a reasonable response from most of the ministries.

Hon. Mr. Scott: You cannot, because it depends on the information requested.

Mr. Chairman: Weasel, weasel.

Hon. Mr. Scott: No, it is not weasel, weasel. You have had a bad day on the parkway.

Mr. Chairman: That is true.

Hon. Mr. Scott: That makes no sense. The issue will always be what information is requested. If information that involves 8,000 pages of documents is requested, we intend to provide it, but we may not be able to collate it in the same time as we can collate one document. If information is requested that goes back to 1890, we may be able to provide it, but we may not be able to provide it quite as quickly as information that was developed in the past three weeks. We want to pick a period of time that is reasonable to permit the minister, in most cases, to make a response.

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To take care of the worst cases I should put in two years, but that is crazy, so we picked 30 days because that will cover most of the responses. Then we get a single extension with appeal to the commissioner. It seems to me that as a piece of machinery, bearing in mind you cannot take care of all cases, that is as good as you are going to be able to do.

Mr. Sterling: I have proposed a number of amendments to deal with the timing problem. I do not believe you can leave it as far open as this act has it. An appeal to the commissioner may be nice, but the problem of an appeal to the commissioner is that you may not get that heard for six or eight months or whatever it is. Therefore, the whole process becomes irrelevant.

What I have said in my amendments under section 27 is that you can have one extension for a maximum of 45 days. Then in a later amendment I say that you have to produce in 90 days, period. You have to produce what you can produce in 90 days. That is it.

Mr. Martel: Then the limit becomes 90 days.

Mr. Sterling: That is right.

Mr. Martel: No, but everybody plays to the 90 days.

Mr. Sterling: If you do not have a limit, you might be anywhere.

Hon. Mr. Scott: My friend is vastly improved since he went out of government. There is no doubt that there has been considerable improvement.

Mr. Sterling: No, I was ready with Bill 80.

Mr. Martel: What bothers me is that if you start with--

Mr. Chairman: What is this Bill 80 you keep talking about?

Hon. Mr. Scott: It is a defunct, nonpassable bill on an ancient order paper.

Mr. Martel: You know what will happen. Any figure you put in becomes the deadline; I do not care how you call it. Something that you should get in 18 days is still going to take 90 days because it becomes the bottom line.

hey never have to worry about reaching that and providing the information until the 90 days is up. In my opinion, it is just going to cause chaos, even he ones Ms. Gigantes has put, quite frankly. I must not say this, but I am going to anyway.

Mr. Chairman: Stop the Hansard.

Mr. Martel: You all agree. It is a numbers game. You diddle here and ou diddle there and the whole thing is insane.

Mr. Chairman: What we are going to have to do with this--we did talk about a steering committee, and once we have gone through the first runthrough of amendments, on matters such as this I am going to encourage the critics to try to come to some agreement on the number of days for responses and things of that nature. I do not think it is worth our while to spend a whole lot of time arguing about 21 versus 30 versus 45. Let us see if we can find something we all think is appropriate.

The next one is a government amendment.

Hon. Mr. Scott: Just so you will know, we think there are words here that are unnecessary and might be thought to be useless, so we just take them out.

Mr. Warner: I am sorry. Which one?

Mr. Chairman: This is the government amendment on subsection 27(1).

Hon. Mr. Scott: The purpose of section 27 is to permit one extension of time where (a) or (b) is documented, which is appealable, by the way. We take out the words that are there in subsections 25(1) and 25(2) because they are unnecessary. It is just a neatness exercise.

Mr. Chairman: Is there any agreement or disagreement with that?

Mr. McCann: If the amendment were accepted to remove the words subsection 25(1) or (2)," then the only time period that can be extended by the head is the 30 days within which to respond to the requester. By leaving those words in, it suggests that the 15 days for the transfer from one institution to another could be extended as well, but that is impractical and does not make any sense in the context of this bill. We think it is improved if there is just a 30-day period, and that is the only thing you can extend.

Mr. Chairman: So the government is admitting that it was impractical and stupid in its first draft of the bill and wants to apologize and withdraw some words.

Mr. Warner: No, what it does do is refer to section 26.

Hon. Mr. Scott: You see, Mr. Chairman, the paranoia is so intense that this amendment, which actually restricts the government's power, is perceived by the opposition as extending it.

One of the time limits fixed under section 25 is the time limit that requires the head within 15 days to forward the request to the new ministry. If you left section 27 the way it was, I, as a minister who was going to forward the document, could get an extension of time to forward the document to the next minister. In other words, I would apply to extend the 15 days to

35 or 45 days. That would give me a power, in your terms, to delay the exercise. We think that is not reasonable, so we think that should come out. The way you take that out is by taking out the words "subsection 25(1) or (2)."

Mr. Warner: I understand that. What you have done, though, is left in section 26, which already allows you 30 days. This amendment still means that you can have an extension of time beyond the 30 days, as specified in section 26.

Hon. Mr. Scott: The section, as written, permits an extension of time, once, in notifying the applicant about what he is going to get, and it also permits an extension of time as we shuffle the thing among the ministries. We say that the latter extension of time should be removed, that we should not get extra time to shuffle it among the ministries. You should get one extra time, subject to appeal, if there is necessity for a delay in notifying the consumer. This amendment helps you.

Mr. Chairman: Are we in agreement? The Attorney General still wants to argue the point. I am just trying to get a sense of whether we are in agreement, or should we let him argue with himself a little more?

Hon. Mr. Scott: No, I am just fascinated by the attitude that if the government proposes it, it must be bad.

Mr. Warner: Just because you are paranoid does not mean there is not someone following you.

Hon. Mr. Scott: You have been here longer than I have. You have reason to be paranoid.

Mr. Chairman: When I see two opposition parties in agreement with the government's proposal (inaudible) the Attorney General. I think we will let it carry despite his objections.

Mr. Martel: Despite what the minister might say, in geometry they call it a corollary; in fact, there are a number of occasions when we move things and the minister is almost paranoid.

Hon. Mr. Scott: That is different. I know you are out to get me.

Interjections.

Mr. Chairman: Okay. Clause 28(2)(c), subsections 28(3), 28(5), 28(7), clause 28(7)(b), subsections 28(8) and 28(9) are set aside.

The next one I will deal with is subsection 30(3), which adds the amendment:

"(3) Where a person examines a record or a part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature."

Hon. Mr. Scott: We will look at this. Subsection 30(2), which we have added in the printed--no, maybe it does not. Maybe it just deals with examining. This deals with copying.

Mr. McCann: There was a little bit of discussion about this the

other day. I think the point of the amendment Ms. Gigantes introduced is to make it absolutely clear that where people are in the course of examining a record onsite, they have the right to make copies of it. I think that is implicit in the section, but it may be worth making clear. I do not think the amendment is very controversial.

Mr. Martel: The problems that arose are still fresh in everyone's mind. At one time you would send an assistant to the Workers' Compensation Board who would spend literally a whole day copying out material which could be Xeroxed and handed to you and take three minutes. That situation is now cleared up, but I think what Ms. Gigantes is trying to avoid, in fact I know what she is trying to avoid is that should circumstances prevail in a different setting, one will get access to the right to Xerox the material rather than trying to copy it all down.

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Mr. Chairman: It does seem to me to be relatively innocuous, except I could probably think of some ridiculous examples that would make it difficult. You have no problem with it.

Hon. Mr. Scott: We have no particular problem with that.

Mr. Chairman: Good. Even the paranoids have friends.

The next one is by Mr. O'Connor, "that section 31 of the bill be amended by adding thereto the following clause: '(aa) the name and office of the head of the institution.'" It does not seem a very radical move.

Hon. Mr. Scott: We think it is covered in clause 32(c) but--

Mr. Chairman: You have no problem with it.

Hon. Mr. Scott: We have no problem. Do we get any marks for neatness?

Mr. Chairman: No.

Hon. Mr. Scott: Because there does not seem to be any point in doing it twice.

Mr. Chairman: Mr. O'Connor, I think you have a major victory on your hands.

Mr. O'Connor: If it is covered in section 32, I will agree--

Hon. Mr. Scott: I will let you be the judge of that.

Mr. Chairman: Frankly, on matters such as this, I would like to leave it in. Then when you go through the review, make up your mind whether you think it is important enough to put it back in as this kind of amendment or whether it is already covered. By then you should have had enough discussion on it to know.

Hon. Mr. Scott: May I add this comment? It is particularly appropriate here. A number of these amendments, and perhaps Mr. O'Connor's, were prepared at the time we were preparing amendments of our own. Though it

is highly unlikely we would come up with the same thing, perhaps we did in this case.

Mr. O'Connor: Section 32 is a brand new section.

Hon. Mr. Scott: Yes. I think section 32 really reflects the concern you have in clause (aa). In going through it, you may think you have done it better, in which case that is fine.

Mr. Chairman: The committee is generally in agreement with the amendment. It is a matter of whether it is covered in another section.

Hon. Mr. Scott: Great minds thinking alike; that is the notion.

Mr. Chairman: There are those lonely enough to kind of make those propositions.

The next one I have is clause 34(2)(ca), "the number of uses of personal information contained in each personal information bank and the number of uses or purposes for which the information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 41(1)(d) and (e)."

Hon. Mr. Scott: By definition, any subsection that includes a phrase and repeats it four times is complicated. I am going to ask you to explain how you understand Ms. Gigantes's amendment.

Mr. Chairman: This means the Attorney General steps down and his staff moves in.

Hon. Mr. Scott: Right.

Mr. McCann: I am not sure I can--

Hon. Mr. Scott: Do your best. That is why you are getting paid.

Mr. McCann: Okay. The amendment would require that in the head's annual report to the commissioner, along with various other things that are set out in subsection 2, the number of uses of personal information contained in each personal information bank would be included, along with the number of uses where the information is disclosed for purposes that are not set out in the directory of personal information banks that is proposed to be published. Actually, it may be easier to consider this amendment in conjunction with the section on the personal information banks directory, which is section 41.

The basic issue about the section is that to keep track of the number of uses of personal information is extraordinarily difficult. There is really no mechanism that would easily allow that number of uses to be logged or kept track of. I think the head would face a substantial burden in trying to comply with this provision.

Hon. Mr. Scott: Is there not one other consideration? If you bear in mind that there is going to be a serious restriction on personal information that can be collected--in other words, there are going to be prohibitions against collecting it except in the most precise cases--then we have to assume that when it is collected, it is going to be used. That has to be our starting

oint. Why do we want to make a list of the number of cases in which it was
sed, when all we are going to get is a numerical total?

Let us assume that if it is collected, it is going to be used and bear
hat in mind when we come to decide whether it should be collected. Why get a
ist that the information in the personal information bank was used 3,400,025
imes last year? It is meaningless.

Mr. Warner: Unless an individual wishes to know whether he or she
as been the subject of innumerable inquiries of a personal nature.

Hon. Mr. Scott: He can find that out when he applies for his own
ile.

Mr. Warner: The number of times?

Hon. Mr. Scott: He could find out if there was any access to it.

Mr. Warner: But not the number of times.

Mr. McCann: Sure. The individual could make a request for access to
is or her own information, say, all the information about me that is
ntained in such and such a personal information bank or banks, and would
ave a right of access to it. The individual could establish the number by
irectly seeing how many items there were in the personal information bank. I
hink this would be in terms of anonymous information, so I am not even sure
hat by this amendment one would be able to determine how many times
nformation about a particular individual had been used.

Mr. Warner: I can see why Ms. Gigantes has put this in. If you use
n extreme case, and the Attorney General can relate quite easily to using
xtreme cases to prove points, a person could consider himself to be the
subject of persecution. If a head in a reporting system reports that so and so
has been the subject of 3,000 inquiries for personal information through the
personal information bank, that might say to someone else that maybe there is
a problem. Maybe this individual is in fact being persecuted by groups or
individuals or organizations. You know now not only that information has been
ought but also on how many occasions. Is that not the purpose of it?

Hon. Mr. Scott: No. If someone makes an application to get personal
nformation about you from an information bank, you are going to get notice of
hat. If someone does it 30,000 times, you are going to get 30,000 notices. It
seems to me that somewhere along the line, you will be saying to the
ommissioner: "This has got out of hand. This person is abusing your process."
I think the commissioner--at least, I have known him to say, "That is freedom
of information, baby," but you will get that information.

Mr. Chairman: Do you want to pursue this, Mr. Warner?

Hon. Mr. Scott: The information bank will know that I own a
single-family residence in the city of Toronto and am 52 years old. Is it
desirable that we should catalogue the number of times my age, which is in the
personal information bank, is used in a research project or in an analysis or
even if someone writes in and asks it? Do we want to know that piece of
information in the bank was used 4 million times last year?

Mr. Warner: I can see that it might serve a useful purpose. I can
also see that it should not be particularly difficult to obtain. I am assuming

we have gone past the stage of scribes sitting around with quill pens. We are at the point where, I assume, this organization will be computerized. Thus, it should not be terribly difficult to program it in such a way that when a head makes an annual report, that information about the number of times persons sought your age out of the personal bank should not be difficult to include.

Hon. Mr. Scott: Do you know that most of the personal information banks are in fact filing cabinets? I must tell you perfectly frankly that we are not going to computerize all of government to comply with the freedom-of-information act. We have millions of filing cabinets across the province, I dare say, that contain personal information. That is not computerized. If you are asking us to set up a record to determine how often personal information is used in a case where it is perfectly legitimate, it seems to me you are just imposing on the taxpayer an enormous task to no purpose. It is counting for the sake of counting.

Mr. Chairman: Do you want to pursue this, Mr. Warner?

Mr. Warner: Yes; not right now. Obviously, we have a difference of opinion.

Mr. Chairman: What I am asking you is, do you want to move this amendment when we come to the time when we are doing that?

Mr. Warner: Yes.

Mr. Chairman: All right. The next one is subsection 34a(1), "be amended by striking out 'to the public' in the third line and inserting in lieu thereof 'for inspection and copying by the public.'"

Hon. Mr. Scott: No problem there.

Mr. Chairman: No problem there.

The next one is out of order. The next one is out of order. The next one is out of order.

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Mr. Martel: What did you do with subsection 34a(1)? Did you agree with it?

Mr. Chairman: Yes.

Mr. Martel: Did the Attorney General agree with it?

Hon. Mr. Scott: Yes.

Mr. Martel: All right. Fine. Thank you.

Mr. Chairman: The next one is clause 36(1)(da). This is a government motion, so I assume you are still on side with it.

Hon. Mr. Scott: Yes. The purpose of this is that government makes awards under the Police Act and the fireman's act for bravery and for the Order of Ontario, and in order to make those awards, we seek nominations from people. That is, of course, the collection of personal information, so it has been brought to our attention that we have to have authority to collect that

personal information. If we were doing Queen's counsels, we would need it for that.

Mr. Chairman: Do not raise that again.

Hon. Mr. Scott: You guys will not pass the bill.

Mr. Martel: Who? Do not say "you guys."

Hon. Mr. Scott: I meant those guys.

Mr. Martel: It could be your own colleagues we are talking about.

Mr. Chairman: Talk about paranoia. It strikes deep.

Is there general agreement that we should continue to allow people to get medals and awards of various kinds?

Mr. Warner: That is okay.

Hon. Mr. Scott: How do you award them without collecting the information?

Mr. Chairman: That is the way we have always done it.

The next one is clause 36(1)(f) which is "amended by striking out 'law enforcement' in the first and second lines and inserting in lieu thereof 'a law enforcement investigation.'" We have had this discussion.

Hon. Mr. Scott: Yes. We have had this discussion which is to reduce law enforcement to policing. There is a bundle of amendments that make that point.

Mr. Warner: It is included. We are going to have the--

Mr. Chairman: We are going to have the basic discussion of how far that goes and whether we put in or take out various amendments.

The next one, again, is a government motion to subsection 37(2), "by striking out 'a public' in the first line and inserting in lieu thereof "an."

Hon. Mr. Scott: We just do not know this got in the act. "Public" should not be in there. There is no necessity for that qualifier.

Mr. Chairman: Who wrote this thing?

Hon. Mr. Scott: Someone deep in the--

Mr. Chairman: Someone no longer employed; I see.

Hon. Mr. Scott: No. As a matter of fact, this was written outside government, so you will have to blame it on someone who came in before we formed the government because we wrote this in our office.

Mr. Chairman: This was Bill 80.

Interjection.

Mr. Chairman: The government is still on side.

Are there any problems from any other side on this?

Mr. Warner: You have now said "an institution" rather than "public institution."

Hon. Mr. Scott: Yes.

Mr. Warner: Is that--

Mr. McCann: "Institution" is a defined term in section 2.

Mr. Warner: That is what I was going to ask, whether you have a definition for "institution" separate from "public institution."

Mr. McCann: No, there is no definition of "public institution." There is a definition of "institution."

Hon. Mr. Scott: "Public institution" is mentioned nowhere else in the act. It seems to have got in here.

Mr. McCann: It is in one other place.

Hon. Mr. Scott: Is there one other place we are coming to?

Mr. McCann: Yes.

Hon. Mr. Scott: It got in here because someone else took up a pen and started writing this section.

Mr. Chairman: I think you are shaky on that item, but it will probably carry.

The next one is an amendment to subsection 37(2), "by striking out 'reasonably' in the third line." I wonder whether amendments of this kind are really in order. It seems to me that if you want to vote against something, you can. This one is borderline, so I will let it stand but it does not seem to mean a lot.

Hon. Mr. Scott: It is one of a bundle we had.

Mr. Warner: No, I would disagree with the chair. "Reasonably" is a qualifying word. When the government drafts legislation, it selects various qualifying words. Sometimes opposition members prefer not to use those qualifiers but to use others instead or none at all. In this case, what Ms. Gigantes is suggesting is that the information should be accurate, not reasonably accurate, and there is a distinction.

Mr. Chairman: When you disagreed with the chair, did you mean that I should not have allowed this amendment to stand?

Mr. Warner: You certainly should allow it to stand and others should support--

Mr. Chairman: That is what I did, so you agree with the chair.

Mr. Warner: You were so reluctant in allowing it to stand, I thought would be of assistance to you.

Mr. Chairman: Even when I give you your way. Does the government have any problem with this amendment?

Hon. Mr. Scott: It imposes an impossible standard. Is it really practical to do that? The obligation of the head of the institution is to ensure that the information he collects is accurate or reasonably accurate. To say that he is to ensure it is accurate is to impose on him an impossibility. If you are going to use "accurate" without "reasonably," I think you have to use a word other than "ensure," because you cannot impose an impossible test. The traditional way is to say that if he is going to ensure, his obligation to guarantee will be an obligation to guarantee against a reasonable standard as opposed to against an absolute standard.

Mr. Chairman: I have never in my life heard a more articulate reference that governments cannot provide reasonably accurate information. I accept your argument totally.

Hon. Mr. Scott: No, we are in favour of producing reasonably accurate information.

Mr. Chairman: You just (inaudible) calling it "reasonably accurate."

Hon. Mr. Scott: No, the amendment proposes striking out "reasonably." I am trying to keep it in there.

Mr. Chairman: All right.

Hon. Mr. Scott: We say it would mislead the public to believe that we could guarantee that all information collected is accurate.

Mr. Warner: Would the Attorney General agree that if we struck out the word "reasonably," so it read "it is accurate," although that imposes a severe standard--

Hon. Mr. Scott: An impossible standard.

Mr. Warner: --if it were to end up in the court, the court would decide whether what was done was in fact reasonable?

Hon. Mr. Scott: Look, when you fill in an application for a driver's licence and say you are 23 years old, I cannot guarantee that information is accurate. You are telling me that I have to guarantee it is accurate if I am going to collect it, that I have to ensure it is accurate. I think I should be required to impose a reasonable standard; that is to say, if you turn up and say you are 12, then there will be a duty of inquiry on the person behind the desk.

Mr. Chairman: Mr. O'Connor, help us.

Mr. O'Connor: The difficulty comes in the placing of the word "reasonably." Perhaps that word should be placed in respect of the government's efforts by saying, "take reasonable efforts to ensure that the information is accurate."

Hon. Mr. Scott: Sure. If you want to say, "The government will take reasonable steps to ensure that...."

Mr. O'Connor: All right. I think that may solve everybody's problem, but "reasonably accurate" is bad because in the case of an age, I suppose it could be interpreted that anybody between 20 and 30--if he indicates he is 25 when he is actually 29, it is reasonably accurate. That is not what we are trying to--

Hon. Mr. Scott: That is why if you take "reasonably" out, you are going to have to put something in its place.

Mr. O'Connor: Put it in before "ensure."

Mr. Chairman: I think you have a semi-pregnant compromise worked out here.

Mr. Warner: Can we come back to this one?

Mr. Chairman: The next one is out of order. On clause 39(1)(c), "by striking out 'agreement or arrangement' in the third line and inserting in lieu thereof 'or written agreement.'"

Hon. Mr. Scott: We had this out in connection with a number of law enforcement sections that we dealt with earlier. I think we put them all aside to be dealt with. It is really a question about whether an arrangement should be contemplated or only an agreement.

Mr. Chairman: The next one is subclause 39(1)(d)(i), and it seems to me that is the same argument.

Hon. Mr. Scott: The same thing.

Mr. Chairman: The next one is clause 39(1)(ha) of the bill, "by adding thereto the following clause...."

Hon. Mr. Scott: I undertook at one stage to let the committee have some examples of people who would not enter into written agreements. It has been brought to my attention that, for example, the New York City police department will provide information but will not enter into a written agreement to provide information. Many states in the United States will provide an exchange of information under an arrangement that they will exchange but will not enter into a written agreement. Massachusetts and Delaware are examples. If we do not have the arrangement protected, those states and cities that provide exchange of information will not be included.

Mr. Chairman: Okay. Clause 39(1)(ha); I do not have an identification on that.

Interjection: Ms. Gigantes

Mr. Chairman: Ms. Gigantes is moving it. It is "adding thereto the following clause:

"(ha) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next of kin or legal representative of the employee."

Mr. Martel: That one should be in.

Hon. Mr. Scott: It is not necessary--

Mr. Martel: Why?

Hon. Mr. Scott: --because it is covered by (as). You can disclose information to anybody where it is consented to, and this is a classic illustration of consent.

Mr. Chairman: I think what I am going to do is set this one aside and let you have those arguments about whether it is covered or not covered by definitions. What may have happened here is that in the government drafting its amendments and opposition critics drafting their amendments they came to the same conclusion using different words, and the challenge will be to find the same words.

The next one is subsection 39(2): "A head shall retain a copy of every request received by the institution under clause (1)(d) for the period of time as may be prescribed by regulation and shall, upon the request of the responsible minister, make a copy available to the responsible minister."

Do we have a problem with this?

Hon. Mr. Scott: Yes, we do. I am just trying to work it out.

Mr. Chairman: Frankly, my reading of it tells me that they would keep a copy of a request anyway.

Hon. Mr. Scott: No. Under the original section 39 we had a subsection 2 that said, "A head shall retain a copy of every request received by an institution under clause (1)(d) for a period of time...." It is exactly this.

Mr. Chairman: That is right.

Hon. Mr. Scott: We recommended taking it out of section 39. The reason is that it was triggered by a request under clause (1)(d) but clause (1)(d) when you looked at it did not contemplate a request, so there was no point asking someone to catalogue requests where the section did not contemplate requests.

Mr. Martel: Surely there would be requests with respect to the number of times the information is requested.

Hon. Mr. Scott: That is something different. Section 39 says a head may disclose personal information under the control of the institution, "(d) where disclosure is by a law enforcement institution, (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement...."

Let us assume that the Ontario Provincial Police is releasing information under 39(1)(d) to the Federal Bureau of Investigation or Interpol. Subsection 2, which is the amendment here, contemplates that we will catalogue where there is a request. In that case, there will never be a request. The information will be released without request as part of an exchange arrangement. To focus the thing on a request or, even worse, a written request

is just silly. There are not going to be written requests. If you want to catalogue on how many occasions information goes from one police department to another police department, that is another question, but you do not do it this way.

Mr. Martel: Where would you put it?

Hon. Mr. Scott: I presume if you want to catalogue how much information goes from one police department to another, you might require the CPP, for example, to report annually on how many letters it writes to other police departments around the world, or how many telephone calls it responds to annually from organizations around the world. It seems to me that the effort to get something here is something that you should really ask the OPP or the law enforcement agency about.

Mr. Chairman: Do you want to pursue this one?

Mr. Warner: I have just one quick question. Why did you put it in, in the first place? You decided to take it out and not put it in any other section.

Hon. Mr. Scott: Because it made no sense.

Mr. Warner: But you did put it in, in the first place.

Hon. Mr. Scott: Yes.

Mr. Warner: Why?

Hon. Mr. Scott: I do not know why we put it in. You have to understand how this bill progressed. It was the Williams report, it was the Breithaupt bill, it was a draft bill in our office, it was a bill in the ministry, it was a bill in legislative counsel's office, and it was a bill, frankly, that went through a variety of changes.

Looking at this bill before you, that section appears to make no sense.

Mr. Chairman: Do you want to pursue this, Mr. Warner?

Mr. Warner: I do not think so.

Mr. Chairman: Bless you, my son.

The next one is that clause 43(2)(c) be amended by striking out "the year" in the second line and inserting in lieu thereof "five years."

Hon. Mr. Scott: It is pointed out to me that when a record is corrected, you have to send it out to people who have received the uncorrected version. The issue is, do you send it out to everybody who has received it in the last year or everybody who has received it in the last five years?

I would hope we could leave this for our three-year review; to see if one year is enough.

Mr. Martel: I was going to say we could look at it with respect to all the others dealing with time.

Mr. Chairman: The next one, and again, I am having a little problem

with some of these, is Ms. Gigantes is moving that clause 45(a) of the bill be amended by striking out "17, 18, 19" in the first line.

If there is an interest in pursuing it, I will let you do it, but to be a little nitpicking about it, an amendment is something which alters a bill. If you do not like "17, 18, 19," you can vote against them. If you want to pursue it, I will let the amendment stand, but it is very close to being out of order.

Mr. O'Connor: The problem is that Ms. Gigantes is not here.

Mr. Chairman: You can if you want. I will let the amendment stand, but I am expressing my dismay with it.

Hon. Mr. Scott: I would ask the committee to consider this very carefully. One of the sections they propose to take out is section 19, the solicitor-client privilege. If you look at what is proposed in the light of that, you see that the thing makes no sense whatever that I can judge.

"A head may refuse to disclose to the individual to whom the information relates personal information" where the information is part of a solicitor-client information. If you are taking solicitor-client information out of that, that means you can breach the solicitor-client information protection if a person other than the client is mentioned in the solicitor-client information.

What that means is that if I go to my lawyer to get advice because Mr. O'Connor is going to sue me, he can turn up and ask for information about what I told my lawyer in so far as it relates to him but not in so far as it relates to me.

Mr. Chairman: I am going to let the amendment stand if you want to pursue it. Mr. Warner, do you or not?

Mr. Warner: First of all, the amendments certainly are in order, because what Ms. Gigantes is arguing is not that--

Mr. Chairman: Once I rule the amendment is in order, I do not think we need to have another argument about whether it is in order or not. If you do not agree with what I am saying, challenge it.

Mr. Warner: The chair seemed unclear as to the procedure. I would be interested in knowing how the Conservatives view this amendment--

Mr. Chairman: Do you want to pursue this or not?

Mr. Warner: --before deciding whether to push on for a vote on it.

Mr. O'Connor: I would like a further explanation. I do not know what the Attorney General just said.

Hon. Mr. Scott: Let me give you an example.

Mr. Chairman: One lawyer talking to another lawyer. It is no wonder you cannot understand one another.

Hon. Mr. Scott: In section 19, we have built in a solicitor-client privilege. That means that if a citizen out there applies for some information

that is protected by that privilege, he is not going to get it, under section 19. Needless to say, the client, that is, the minister or whoever the client is, can get that information because he has given it.

Section 45 says a head may refuse to disclose personal information to the individual to whom the information relates in the following cases. That would mean that if I was afraid I was going to be sued by you, Mr. O'Connor, and went to a solicitor and put facts about you before him, I could get the information. That is obvious; I had given it. You could not get the information that solicitor received if section 45 stood as it did, but if you take out section 19, you could apply for the information. A citizen whom we are considering suing or an accused person in our courts will be able to apply and say, "I know I am being sued, and I want counsel's opinion given to the Attorney General's department. I know it is normally protected under section 19, but it is not protected under section 19 in relation to section 45. You will be obliged to disclose it, because there is no exemption for its nondisclosure."

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Mr. O'Connor: I understand that as explained with respect to section 19, and I thank you. Perhaps, though, Ms. Gigantes has chosen three sections for some reason. Perhaps we should await her explanation with respect to the other two, at least. There may be some reason she has chosen those to be eliminated. I would not want simply to defeat it without hearing more from her.

Mr. Chairman: Okay, we will set it aside. The next one is on clause 45(c).

Mr. Martel: Try as I might, I do not know what the hell government clause 45(c) means. Maybe somebody, the fount of all wisdom himself, would explain what clause 45(c), as printed, means.

Mr. Chairman: While they are thinking about that, I will put the amendment in front of you.

The next one is clause 45(c) be amended by striking out "reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence" in the last five lines and inserting in lieu thereof "unfairly expose the source to civil liability or place the health or safety of the source at risk."

Hon. Mr. Scott: The government gets information in order to evaluate, let us say, the capacity of a tenderer to provide an efficient contract. X tenders for a contract. We inquire, "Has X has ever done this kind of work?" We collect some information. X has done this work but has not done it terribly well. I can be obliged to release that information to X but not if, by doing so, I will disclose the person from whom it came.

Mr. Chairman: Have you got that?

Mr. Martel: Did you get that? I am slow this morning, but that was a wonderful piece of fancy dancing.

Mr. Chairman: I would not give you a legal aid certificate for that kind of opinion.

Mr. Martel: Would you repeat it for me?

Hon. Mr. Scott: I will repeat it, but I wonder whether it will serve any purpose.

Mr. Martel: That is the problem.

Hon. Mr. Scott: Communication is a two-way street.

Mr. Martel: That is right. Repeat what you said.

Hon. Mr. Scott: All right. I gave an example, so it would be concrete. You have to listen to some of these things.

Mr. Martel: All right. I was listening.

Hon. Mr. Scott: Let us take an example. The example is a government seeking to issue a contract. It is looking at issuing it to X. X is a contractor in the field and has done the same kind of work for other employers in the past. We may, as a government, make inquiries about whether he has performed those contracts in a satisfactory way. We will get information from other employers that he did, he did not, he was always late, he was hopeless or what have you. That will be a factor in our decision to award the contract.

At the request of X, we will be obliged to release information to him unless the release of the information is exempted. If he says, in effect, "I want to see everybody who gave me a reference, good or bad," we would be obliged to do that; except under this section, we can refuse to release the information to him if it would disclose our source of information.

Obviously, the reason for that is if we disclose our source of information, the capacity to get that information is immediately going to dry up. When we lose the capacity to get that information, we lose the ability to examine tenderers with respect to their past performance, for example.

Mr. Warner: May I fairly interpret this to be that the difference between your wording and what Ms. Gigantes is suggesting is that yours is wider in scope and hers is more restrictive? She is saying only in particular circumstances, while you are saying a blanket exclusion.

Hon. Mr. Scott: No. Let us look at the purpose of this. The purpose of this is to encourage people to tell governments things that governments legitimately need to know. In deciding whether the taxpayers' money should be spent on making a contract with X or with Y, government should be entitled to talk to other people who have had contracts with those two people in order to get a sense of who does the best job. So the purpose is allowing government to get access to information that it needs to have in deciding that it should contract with X rather than Y.

We say that if you go and ask people about contracts they have had with the X Construction Co. they will say to you: "I will be glad to tell you, but I do not want any hassle. I assume this is in confidence," and we want government to be able to say, "Yes, it is in confidence." Her amendment says, "It is not in confidence unless you are going to be sued; unless it unfairly exposes the source"--not the government, unless the informant is unfairly exposed to civil liability.

Mr. Warner: As printed, does your proposal not allow the opportunity

for inaccurate information to be given and the source of the inaccurate information to be protected?

Hon. Mr. Scott: Yes.

Mr. Warner: Surely, then, her approach is a better balance.

Hon. Mr. Scott: The point is that if you take her approach you will not get the information. That is the problem. The real question is whether government should have the information. If you say government should not have the information, then there is no problem. If you think government should have the information, you do not want to create a freedom of information system that will preclude people from giving government the information.

Mr. Warner: But, surely, neither do you want a government operation built solely on anecdotal, unchecked, unverified and inaccurate information.

Hon. Mr. Scott: That is the judgement you have to make. Let us face it. If I hire a contract employee to do typing for me for two weeks, if it is important typing I may very well say, "I would like a reference." Those references are almost invariably given, if they are going to be candid, on the basis that the information will not be disclosed, especially the negative ones, because people do not want the hassle. They say, "Is it in confidence?" If you say, "No, it is not in confidence," you are not going to get the information. They say, "If it is not in confidence, goodbye, I am not interested."

The issue is not whether information should be collected and it is not whether wrong information should be collected because governments will inevitably collect wrong information. It is a general matter of whether the desirability of having the information outweighs the prospect that some wrong information will be collected.

Mr. O'Connor: Mr. Warner got into the point I was going to make. The real necessity for government is to obtain accurate information. You primarily want it to be accurate. If it is hanging over the head of the person who gave it that it may well be disclosed, that person may be more inclined to be accurate and factual than if that is not the case. It will dry up some sources, but for the most part people are honest and will want to help, and they will give accurate information.

There is a balance to be struck here. Right now, I am more inclined to think that some wording along the line of the amendment of Ms. Gigantes could be useful.

Hon. Mr. Scott: Well, first, you will not get the information and second, it is beyond possibility of government to insure that the information it gets is accurate.

Mr. Chairman: It does seem to me that somewhere in our deliberations hereafter we will have to move towards some wording which satisfies most people. I must say that I would hate to be the person who makes the decision as to whether this might or might not expose you to some kind of civil liability. That is a judgement call that would be rather nifty to make, especially 10,000 times a year, so we will set that aside. That is an area where we are looking for some change in the wording.

Mr. Martel: There is something that bothers me about this whole act.

Hon. Mr. Scott: You do not like it.

Mr. Martel: No, it is just an obstacle course. If someone is good at gymnastics, he might eventually get through it, but I see the words "health" and "safety" thrown around in this act like they are going out of style. I have spent a considerable amount of time since last Tuesday trying to find out where it talks about my ability to get records from hospitals. It is not there.

Hon. Mr. Scott: It does not.

Mr. Martel: Do you mean to say that we are going to go through an act on freedom of information without that? I know the number of complaints I get about hospitals and the way they are, in my opinion, covered up. Somewhere along the line before we are done, I am going to move an amendment or get in an amendment which covers hospitals.

What triggered me was that I saw this health and safety nonsense and wrattle. I read your definition way back at the front of this thing and the amendment proposed by my friend across the way which said something about financing.

Hon. Mr. Scott: Mr. Martel, you seem to think the freedom-of-information principle is one designed to make the preparation of questions for question period easier. That is not its principal role. That may be a side benefit that we will convey.

Mr. Martel: No. The Minister of Labour (Mr. Wrye) can never answer a question, so it does not matter whether you make it easier for him. He is never capable of answering a question. This stuff is not in the newspaper every day, so he is lost. Perhaps someone would help him.

Hon. Mr. Scott: Just as you are not in the newspaper every day.

Mr. Martel: I never use the newspaper to raise my questions. I do not rely on the newspapers. What bothers me is that, as I look around, nowhere in here can you get information with respect to nursing homes.

Hon. Mr. Scott: Mr. O'Connor has an amendment to section 2 that deals with who should be covered by the freedom-of-information act, and we will be dealing with that in a general way under section 2. It is perfectly plain that hospitals are not intended to be covered by the freedom-of-information act.

Mr. Martel: Yes, but your amendment does not cover it either, my friend.

Hon. Mr. Scott: No, it will not cover hospitals.

Mr. Martel: No, it does not. It says that is financed exclusively from the consolidated revenue fund, while hospitals are not financed totally by the consolidated revenue fund. Those words allow hospitals off the hook. If we talk mental institutions or psychiatric patients, they are covered.

Hon. Mr. Scott: It is all a question of line-drawing, but the intent has been to attempt to include all those institutions beyond normal ministries that are traditionally regarded as being and are government-controlled.

Mr. Martel: Are you telling us hospitals are not government-controlled?

Hon. Mr. Scott: No, but that does create marginal issues, and hospitals are a marginal issue. How about municipalities?

Mr. Martel: We thought we were eventually going to include municipalities.

Mr. Chairman: I have an indication from Mr. Martel that there will be an amendment put forward by him to cover hospitals.

Mr. Martel: Unless my friend O'Connor cleans this up.

Mr. Chairman: I suggest to you that we can deal with that matter at the point when we draw the lines as to what is covered under this bill and what is not. We have an indication that there will be a move to put an amendment to cover hospitals. You may say correctly that you have not put it forward in your proposal. Mr. Martel has just given an indication that he will do so.

Hon. Mr. Scott: Nobody has put it forward.

Mr. Chairman: You just got it.

Mr. Martel: I am just telling you now that you have it.

Mr. Chairman: I do not think there is any further confusion on the matter.

Hon. Mr. Scott: I think we should put forward the Sudbury Star for inclusion.

Mr. Chairman: The next one I have is clause 45(d), "by striking out 'prejudice' in the second line and inserting in lieu thereof 'seriously endanger.'"

Hon. Mr. Scott: Yes, this exhibits Ms. Gigantes's concern about the use of the word "prejudice," which is, of course, a lawyer's word that has a precise signification.

Mr. Chairman: Whatever that means.

Hon. Mr. Scott: That precisely signifies something. "Seriously endanger" is a more wimpish phrase than "prejudice," because "prejudice" speaks to any disadvantage and "seriously endanger" is wah, wah, wah.

Mr. Chairman: I am going to tell Ms. Gigantes you called her wimpish, and we will see who is wimping on this.

Hon. Mr. Scott: You ought to see what she called me in the Ottawa Citizen only three days ago.

Mr. Chairman: Ah, he reads the newspapers.

Do you want to pursue this one?

Hon. Mr. Scott: It seems to me this is an effort that should be stopped.

Mr. Chairman: We have felt the hard heel of the jackboot on this. Is there any resistance being expressed? Very little.

The next one is 45(e), "by striking out 'reveal information supplied in confidence' in the second and third lines and inserting in lieu thereof 'unfairly expose the author of the record or a person who has been quoted or paraphrased in the record to civil liability or place the health or safety of that person at risk.'"

Hon. Mr. Scott: This is the same issue we dealt with a couple of moments ago, only in the correctional field rather than in the--

Mr. Chairman: Are we looking for some reasonable compromise in wording again?

Hon. Mr. Scott: No, we are looking either to accept or reject that amendment.

Mr. Chairman: The chair stands corrected. The next one is out of order.

Mr. McClellan: I did not know we had a majority government already.

Hon. Mr. Scott: At the rate this is proceeding, we probably will.

Mr. Chairman: The next one is 46(2), "be amended by striking out '30' in the second line and inserting in lieu thereof '90.'" Again, that is the timing discussion I think we will have to come back to on one occasion.

The next amendment is out of order.

The next one is that subsection 50(1a) be struck out and the following substituted therefor:

"(1a) Where the commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the commissioner may exercise the discretion of the head and order the head to disclose or not to disclose the record or part."

Hon. Mr. Scott: We have been through this before. I suggest we leave it, because I know Ms. Gigantes will want to be heard on this subject.

Mr. Chairman: I have seen him on his knees before, but never quite so blatantly. We will come back to that one.

Is 50(1b) the same thing?

Hon. Mr. Scott: Yes.

Mr. Chairman: Okay.

Next is that subsection 52(2) "be amended by striking out 'and privacy commissioner' in the second line and inserting in lieu thereof 'commissioner or the assistant privacy commissioner.'"

Mr. Martel: Might I ask the minister if he is now prepared to accept that amendment, which directs the commissioner to institute, not by his choice but by the legislation, that there have to be two assistants?

Mr. Chairman: I think we identified on a previous occasion that we may want to move amendments which--I guess the best way to phrase it is--take away the power of the commissioner to set up shop as he sees fit and to lay it out as the way the Legislature sees fit. So we will have this argument one way or the other.

Hon. Mr. Scott: That is not what this--go on, I am in the wrong one. Have we passed section 52a?

Mr. Chairman: This is subsection 52(2), and if the previous amendment by Ms. Gigantes carries, it seems logical that you would make this kind of correction.

The next one is section 52a, which says:

"(1) A party to an appeal to the commissioner may appeal the commissioner's decision to the Divisional Court within 30 days after the commissioner's decision.

"(2) An appeal under this section may be made on a question of law, a question of fact and law or a question of fact alone."

Hon. Mr. Scott: Can I make a suggestion? This is a very popular proposal. I think both the New Democrats and the Conservatives have suggested there should be a wide-open appeal to the Divisional Court. It is popular because there is a sense that the courts will be good at this sort of thing, which I must say is contrary to my sense. Both parties support it, it is going to be passed and there will be a wide-open appeal.

My fear, based not simply on suspicion but on some reality, is that a wide-open appeal is going to prevent disclosure of information at the suit of those who can command lengthy court litigation. I am afraid that large motor companies seeking to preserve privacy for their documents in government and large governments seeking to prevent the disclosure of information to citizens will use the court process because they have the resources to conduct the lengthy hearings that will be required where they are looking at questions both of fact and law.

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I am not going to allow the freedom-of-information act to fail because I have this view about a section such as this being used to inhibit disclosure. What I would ask the two parties to do is to be sure, as perhaps they are, that they have investigated that, not by asking "Are appeals to the courts good?" but by reference to those who have experience with the way courts use the appeal process. Any person, for example, who is familiar with freedom-of-information legislation and the way it works will have something to tell you about these sections. We do not want to do anything bad, any of us. I would just ask the committee members representing the parties to look at these sections very carefully.

Mr. Chairman: It strikes me that an amendment of this nature is likely to carry. The Attorney General has expressed his paranoia about our court system, and we can now proceed.

Mr. O'Connor: If I may say before we go on, I am concerned that an amendment of this nature and substance is being argued against by the government on the basis of the process, that substantive rights should somehow

not be granted to people because they are cumbersome or difficult to obtain. I do not think that is a good or valid argument that should be used. If they are substantive rights and they are inherently good, then we should work towards making them simply obtained and cut down time limits and bureaucracy, rather than simply putting them aside and saying: "You cannot have that right because it is tough to obtain. Someone might use it against you."

Mr. Chairman: It also occurred to me that whether or not we put an amendment of this nature, I do not see how you would stop somebody from going to court on precisely these points.

Hon. Mr. Scott: You will not, Mr. Chairman. What this does is open--

Mr. Chairman: It makes it easier.

Hon. Mr. Scott: It does not really make it easier to file your notice of appeal. What it does is give the court the broadest kind of authority so there is no way of saying, "That cannot go to court and this can."

What we are going to have here is a commissioner--we hope he is going to be good--who is going to remake every decision that ministers make. I think the commissioner, if we get the right kind of person responsible to the Legislative Assembly, will be the one who will make the act work. What he will do is overrule ministers who want to hide stuff, as ministers after a passage of time may want to do. The commissioner will be the person reversing those decisions.

The people who have the decisions reversed will be the ones who want to go to court. Who are they? They are government itself. Government will want to go to court to reverse the commissioner. A second category of people will be people who are having information released that they gave to government, that is being released to the suit of somebody else. A third category, very small I believe, will be individuals who have been refused information by the commissioner.

Is there anybody here who does not believe that the rich can play the process better than the poor? There is no question about it, unhappily. It is nobody's fault, but rich people can afford long litigation.

Mr. O'Connor: There are ways of dealing with that situation. In the case of governments attempting to or being seen to delay the process for their purposes, it is a political play. In the case of others, there is the cost remedy. The court is going to award costs against them all along the line. They can order expedition of process--

Hon. Mr. Scott: Let me put this example to you, Mr. O'Connor. If you had this kind of appeal from the Ontario Labour Relations Board, there would not be a case that was not appealed by the dissatisfied party. Enough of them are appealed now under judicial review; if you had a wide-open appeal, the capacity of that board to do its work would be hamstrung. What you are doing is putting in a wide-open appeal just as if you were doing the same for the OLRB or the Ontario Energy Board or any of the other government tribunals. We know how those wide-open appeals are used on the ground.

Mr. Martel: In regard to an appeal of a decision, I am intrigued by the costs, because you are right. If, for some reason, you are going to ask Ford Motor to open up, it has to disclose and it can appeal. They have all kinds of money to burn. In your estimation, what would an appeal to the courts cost? How long would it take and what can you lawyers have?

Hon. Mr. Scott: There is really no way of answering that. The difficulty I have about this kind of amendment is not that it creates an appeal that is not there now, because judicial review is there now, but because it is not constrained, as judicial review is, to denial of natural justice. You can ask the court essentially to look at anything, and it therefore contemplates a process that is longer.

If you look at the federal appeals under the Access to Information Act, that is exactly what you are getting, a series of very long cases: nine, 10, 11 or 12 days of hearings. The longer the case, the more expensive it is.

Mr. Martel: And the less other people can be in the ball game, unless they are wealthy or have someone funding.

Hon. Mr. Scott: Or have legal aid.

Mr. Martel: Legal aid is pretty limited too, in the number of ways you can get it.

Mr. Chairman: Okay, it does appear to me that an amendment of this nature is going to get proposed and will be dealt with.

Mr. Sterling: One of the problems of course, Attorney General, is that you set up the initial structure that we have to work with and you are giving the Information and Privacy Commissioner extremely broad and wide powers to make the final decision. I think you are limiting too much the scope of what he may make in that decision, in terms of the wording of the exemptions and the wording of section 50.

The problem is that if you had followed the Williams model, all your arguments would be out the window. If you are going to go to an independent review and put the information commissioner in the role of the judge and not in the role of an advocate, then you would take care of the situation. I much prefer the Williams commission approach, in which an appeal to the Divisional Court would not be necessary. But you have chosen this particular route, and the only thing we can do is work with the existing structure, rather than ripping the act apart.

Hon. Mr. Scott: Williams essentially contemplated a super-commissioner on top of our commissioner before you went to court. Frankly, having great regard for Dr. Williams's opinion, I did not think it was necessary to have another layer in this process. I understand your view, and you may indeed be right, but that is the judgment we make.

Mr. Chairman: Okay, it is after 12 o'clock. Do you want to break now and come back? It seems to me that it is at least feasible that we could complete our first runthrough of the amendments this afternoon.

We will stand adjourned until two o'clock.

The committee recessed at 12:08 p.m.

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Government
Publications

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

MONDAY, MARCH 30, 1987

Afternoon Sitting



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McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday, March 30, 1987

The committee met at 2:11 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Resuming consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: This morning when we left we were at an amendment on section 52a by Mr. O'Connor. We dealt with that. The next one, by Ms. Gigantes, is an amendment that is out of order, as is the next one. The next one is a government motion on subsection 53(2), to amend by striking out "a public" in the first line and inserting in lieu thereof "an." It seems to me I saw this one before, earlier this morning, so I take it it is bringing it into line.

Hon. Mr. Scott: It just says that the estimate that is required to be given by he who releases the information will be given where the estimate indicates an amount to be paid more than \$10 rather than more than \$25. I think all that does is increase the size of the bureaucracy with no corresponding advantage to the public interest. I am opposed to it.

Mr. Chairman: You are opposed to the amendment that you are moving?

Hon. Mr. Scott: No. The subsection 53(2) amendment.

Mr. O'Connor: That is yours.

Mr. McCann: No, there is a mixup here. There are two amendments to subsection 53(2).

Mr. Chairman: You guys need a good lawyer. Do you want to hire somebody?

Mr. McCann: This is the one they are discussing.

Hon. Mr. Scott: No, our amendment to subsection 53(2) removes "a public" and inserts "an" and is consistent with the one we dealt with this morning. The one I am addressing is Ms. Gigantes's, which reduces the minimum limit of \$25 to \$10.

Mr. Chairman: That is in the next one. Is there any problem with the government's proposed amendment? Okay.

The next one is subsection 53(2) by Ms. Gigantes.

Hon. Mr. Scott: We have already spoken to that one.

Mr. Chairman: This is the amendment striking out "\$25" in the fourth line and inserting in lieu thereof "\$10."

Mr. Warner: What is the problem?

Mr. Chairman: Destroying democracy in the free world.

Hon. Mr. Scott: We do not know what it will cost, but what it will mean is that in every case where the cost of producing the information is likely to be more than \$10, we have to produce an estimate of it. With that goes all the business of making the estimate and providing it.

Mr. Warner: You have to do that anyway.

Hon. Mr. Scott: At \$25, you reduce by thousands the number of cases where estimates have to be provided. There are moments when I think some of these amendment are simply designed to make the system unworkable.

Mr. Martel: Oh, you are paranoid.

Mr. Chairman: What we are talking about here is that at some point you will have to set levels for charges. This amendment is one which reduces it to \$10. The government's position apparently is that it would like to leave it at \$25. It seems to me we will have that argument at some point because it goes to the question of whether there is a nominal charge and whether estimates are prepared.

Mr. O'Connor: Are we finished with that for a second? Should we also strike out the word "public"?

Hon. Mr. Scott: We did, I think.

Mr. Chairman: Yes.

Mr. O'Connor: You did in 37 and you said it was the only place in the act and you were wrong.

Hon. Mr. Scott: No, I said there was one other place in the act and 37 seconds ago, we did it.

Mr. O'Connor: I did not hear it.

Hon. Mr. Scott: Apparently.

Mr. O'Connor: Obviously.

Mr. Chairman: So we will have a division on that at some point. There needs to be a clarification of that.

Hon. Mr. Scott: It was stricken before you struck.

Mr. Villeneuve: On Ms. Gigantes's proposed subsection 53(2), I would like to know what type of yardstick you intend on using to arrive at \$10 as opposed to \$25 or as opposed to \$225?

Hon. Mr. Scott: The point of subsection 53(2), as I understand it, is not to fix the price of the copying--that is done under the regulations--but rather is a plateau beyond which an estimate must be given. If you apply for a piece of information and the people at the desk are of the view that this can be provided for less than \$25, they will not be obliged to provide you with an estimate of the cost before doing the search. Whereas, if

they conclude that the cost may exceed \$25, before they begin to do the search, before they begin to find the information for you, they have to do something entirely different, which is prepare an estimate for you.

Mr. Villeneuve: This would be predicated on the estimated time required to gather this information, if it is not readily in a computer or whatever?

Hon. Mr. Scott: Yes. The only issue here is, is the plateau \$10, in which case there will be thousands more estimates required to be given, or is it \$25?

Mr. Chairman: When we do have that argument, the Attorney General's office will provide us with the basis upon which they estimate that there will be thousands more given and that will probably costs thousands of dollars.

Hon. Mr. Scott: It is obvious, is it not?

Mr. Chairman: No.

Hon. Mr. Scott: Of course it is. If you have 100 estimates, it will not be larger if all of those estimates are over \$25. If any of them are below \$25, the number of estimates required to be given will obviously be more.

Mr. Villeneuve: If this is all information readily available on computer tape or in a computer or whatever, there should theoretically be no cost.

Hon. Mr. Scott: But let us understand, the information that is going to be provided under the freedom of information act is not on computer. In volume terms, there is almost no information in government on computer. We are talking about thousands and thousands of files made up of sheets of paper, letters, copies of letters that have been accumulating in the public service of Ontario for six or seven generations. They are not on computer. We have not the slightest intention of putting them on computer. To do that would cost billions of dollars.

They are there and we will fish out information you want, and if you, Mr. Villeneuve, write in and say you want a copy of a letter that your grandfather wrote to the Minister of Transport in 1911, we will try to find it, but do not think it is on computer. We will find it by looking at files. What is on computer is a very narrow kind of information accumulated in the very recent past.

Mr. Chairman: I take we will set that one aside and have that argument at some point. The next one is subsection 53(3), striking out "required to be paid under this act" in the second line and inserting in lieu thereof "that may be charged under subsection 1."

Hon. Mr. Scott: I think we should hear the mover of this because we do not really understand why she is doing this and what the purpose of it is.

Mr. Chairman: Basically, I think we could set this one aside too. I think the argument that the committee will have to have is, is this a right which is provided to the people of Ontario free of charge no matter what the cost? Is there a fee for exercising this right and what is a reasonable amount for that fee? If there is larger cost involved, how will you estimate that? It should be an interesting argument, but I think we will set this one aside to be dealt with along with the other one.

The next one is subsection 54(2), striking out "contain" in the first line and inserting in lieu thereof "provide a comprehensive review of the effectiveness of the act in providing access to information and protection of personal privacy, including."

Mr. Martel: I think the government should include this one. It sets a direction for the commissioner, indicating what we want to know as a Legislature and being rather definitive about it.

Hon. Mr. Scott: I do not think I have any major objection to it.

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Mr. Chairman: The next one is clause 54(2)(a), striking that out and substituting the following therefor:

"(a) a report on the nature of applications and their disposal during the previous year."

Hon. Mr. Scott: I do not understand what that means. That is to replace a proposal that requires the report to contain a summary of the nature and ultimate resolution of appeals. In other words, what is the nature of the appeals, under whatever heads you want, and what is the result of them. This is replaced with a report on the nature of applications.

Mr. Martel: I think it is just a more definitive report on the nature of the applications and their disposal. Unless we know what is happening--

Hon. Mr. Scott: What is an application? What is meant by an application?

Mr. Martel: I suspect she means for information.

Mr. Chairman: Anyone who has made an application under the act.

Hon. Mr. Scott: Does she mean a request?

Mr. Martel: Yes.

Mr. Warner: An application for information.

Hon. Mr. Scott: No, the language in the statute is "request." Does she mean something different than "request" or does she mean "request"?

Mr. Warner: Why did she not use "request"?

Hon. Mr. Scott: I cannot imagine. Is there a reason she did not use "request"?

Mr. Martel: I do not think so. I think she wants to know how whatever is being requested is disposed of.

Hon. Mr. Scott: The problem is to focus again on what we are doing. The commissioner is not going to have the faintest idea how many requests have been made. Requests are made to the several hundred agencies. A large number of those requests will be accommodated without the slightest concern on one side or the other in the sense that a request for information about your

driver's licence will be granted. A number of those requests will be summarily abandoned by the applicants when it turns out that they are satisfied that the government does not have the information.

I can understand cataloguing the number of cases in which there is a legitimate dispute or some policy issue about whether the request should be granted, but why is it that we want to know--and what would we do with the information if we had it--the number of people who made a request?

Mr. Warner: I am sorry, I did not mean to mislead you. She relates back to subsection 46(1), which is the appeals. What she is suggesting is not just, as you have indicated, the resolution of appeals, but the actual applications for appeals. It relates back to subsection 46(1), the right to appeal.

Hon. Mr. Scott: But there are not any applications for appeal.

Mr. Warner: She has used the term "applications." Is there some other term you want to use?

Hon. Mr. Scott: It is a question of what she wants. If she wants to know about appeals, I can understand that. If she wants to know about all the people all over Ontario who made applications by turning up at a bureau and saying, "Could I have a copy of my driver's licence?" I think that is just a colossal waste of time and taxpayers' money, unless we can illustrate that it serves some useful purpose in tracking the history of the legislation or in tracking its effectiveness. Tracking the applications is not going to help us. Tracking the decisions at the appeal level might, but not at the head level.

Mr. Chairman: We can set this aside now and deal with it at some other point, but I think the committee has said that the tracking of how this act is used, how many people use it and how many requests for information are sought is going to be rather important, especially if we are trying to determine at a later date whether people use the act, whether there is a need for a lot of intervention on the part of the commissioner, whether it works automatically. We can set this aside for now, but at some time you will have to deal with the matter.

Mr. Sterling: Under section 34, we require a head to make an annual report to the commissioner. Then the commissioner is going to make an annual report to the Speaker of the assembly. I presume he would transcribe whatever was given to him from the heads of the various institutions. Is that what is intended by the government?

Hon. Mr. Scott: We intend that the commissioner should make a report that will set out certain information. We intend that the commissioner should be available to this committee or any successor of it in order to provide his view as to the way the act works and whether it is sufficiently structured, whether people utilize it, what the roadblocks are and so on. What we do not want to do is spend a lot of time collecting useless information, which is simply a drain on the taxpayers. If there is some information to be collected that serves a real purpose, the taxpayers should pay for it, as they will. But the sense I have here is that we are collecting a piece of information that will not tell us anything about anything except that two million applications were made last year.

Mr. Sterling: I have a bit of a concern as to how this information is going to come in front of this committee. Section 34 says that a head makes

an annual report to the commissioner. It does not say the commissioner then turns that particular data over to the Legislative Assembly and it does not tell you when it is going to be turned over to the Legislative Assembly. Does he wait until he gets all this material from all the agencies? Does the Legislative Assembly get the report a year and a half later after some head has finished off his particular report to the commission? It also says here that the responsible minister shall make that report public.

Hon. Mr. Scott: You are dealing with something else, though. What section 54 deals with is the commissioner's report. In the commissioner's report, which I presume will be annual and, in the absence of this committee, will be direct to the Legislature, he is asked to catalogue, according to this amendment, all the applications, and their disposal, made presumably not to him because he does not receive applications, but rather to the heads of ministries and agencies.

Mr. Martel: You have to refer back to subsection 46(1).

Mr. Sterling: Both pieces of material will be of interest to this committee when we will be reviewing this piece of legislation three years hence.

Hon. Mr. Scott: I presume any reports that are made to the Legislature by either the heads or the commissioner will be forwarded to the committee.

Mr. Sterling: There is no requirement for the heads' reports to get to the Legislative Assembly.

Hon. Mr. Scott: Then draft an amendment. Slip it right in there and we will see if we can get it in.

Mr. Morin: Ms. Gigantes's amendment removes completely clause 54(2)(a). These are two different things. One is a summary of the nature and ultimate resolution of appeals carried out under subsection 46(1), and then she asks for a report on the nature of applications. They are two different things. If she wants it in, she should add another one. Normally, you keep a record of applications.

Mr. Chairman: We will set that aside. I think the committee is fairly clear that it will have to do some defining of how you want that report made, what it should look like and what should be in there. However the wording might be put together, that is a matter you have to deal with.

Mr. Martel: Maybe the Attorney General (Mr. Scott) could try to clarify it. It does not say anywhere in there how rejections of appeals of decisions, as described under section 46, are handled or will be reported. How do you know where the act is falling apart if there are problems with it? The appeals should be a part of the collation of material that you have, to say, "We are having trouble here in this particular section."

Hon. Mr. Scott: Under clause 54(2)(a), the commissioner will make an annual report to the Speaker of the assembly in which he will set out the number of appeals that have been taken to him over the preceding year and their ultimate resolution. The ultimate resolution of an appeal will involve, at the very least, a decision and he will have described the appeal already, because that is what a summary is. The ultimate resolution will involve describing whether the appeal was won, lost, settled or disposed of in some

other fashion. What the Legislative Assembly will get every year through the Office of the Speaker is a list of the work that came to the commissioner's attention during the preceding year in terms of appeals, a description of what those appeals were about and what happened to them, how he dealt with them--exactly what you want.

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Mr. Chairman: That will be the framework on which you will expand or contract this reporting mechanism.

Hon. Mr. Scott: Yes. I presume you will see, looking at that, for example, that the Attorney General's ministry is attracting more appeals than any other ministry of government even though the number of applications to it is smaller. That may lead you to think something is going wrong in the administration of the freedom of information act in that ministry, and then you will investigate that.

Mr. Chairman: Have we explored that one long enough then? I think we know what the problem will be.

The next one is that section 55 be amended by striking out "may" in the first line and inserting in lieu thereof "shall," by striking out clauses (c) and (d) and by adding thereto the following subsection:

"2. The commissioner may,

"(a) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual, and

"(b) engage in or commission research into matters affecting the carrying out of the purposes of this act."

Mr. Martel: What she is doing is simply making the first half mandatory and the second half discretionary. I think the reason for that is that you are looking at the storing and collection of personal information and she does not want to leave it that he may do it or may not.

Hon. Mr. Scott: Why would one impose on the commissioner the positive obligation under (a) of making comment, whether he wants to or not or whether he has something to say or not, on the privacy protection implications of proposed legislative schemes? There are hundreds of legislative schemes that come before government every year. Every bill is a legislative scheme; there are 150 now. I can understand that the commissioner might want to comment on some of them. Why he should be required to comment on all of them, even if he has nothing to say about any of them and even if he does not want to examine some of them, is beyond me, unless there is some desire to create an enormous, unproductive bureaucracy.

Interjection.

Hon. Mr. Scott: We are proposing amendments to an act; that is a legislative scheme. We are also proposing hundreds of government programs in my ministry every year that do not have a legislative scheme. What is proposed is that the commissioner shall report on each one of those, without discretion, whether he wants to say anything about it or not. I suppose he can say, "I report by saying I have nothing to report because I have not looked at it." Then someone will say, "You are not doing what you are supposed to do."

What we do here is give him the right to exercise his own discretion, to comment on anything he wants to comment on.

Mr. Chairman: We can set this aside for a vote--I presume we will have to--but I think this goes towards what Norman was talking about earlier when he was suggesting that in the process there is a privacy advocate at work and a freedom of information advocate at work and that part of their job is not just to act within the confines of this piece of legislation but to be active advocates in the field.

I guess what you would be doing by accepting this type of amendment would be saying that the obligation rests with the commissioner and that he does not have the choice to come forward and write something into his report if he feels like it; he now would have an obligation to report to the assembly on schemes of this nature and how they would have an impact on the public and on this legislation. I guess it really depends on how far you want to go in advocating these things.

Hon. Mr. Scott: Last year the Minister of Agriculture and Food introduced a new program that has to do with an expansion of the existing rebate of realty tax for farmers. That is one of hundreds of programs that have been introduced in the last year by this government. Do you really want the commissioner to take time out, when he thinks it is completely unnecessary, to study that in order to determine whether there are any privacy implications, or do you simply want to vest him with the authority to study it if he thinks it useful or appropriate to do so? To require him to do it means he is going to be here saying, "I am going to need 300 more people."

Mr. Sterling: Who does he react to? Would he normally vet every piece of legislation to see if there were privacy implications?

Hon. Mr. Scott: My view is that the commissioner would do what the Attorney General's ministry tries to do with respect to the charter. You would look at all the government programs and all the government legislation coming forward, and you would assess those that have privacy implications, either positive or negative. You would report to the Legislature, "I have seen the government's program on automobile insurance which has the following negative privacy implications which should be examined," or "I have seen the government's legislation on the Registry Act which has the following difficulties," but to require him to report on every one of those, it seems to me, is just bonkers.

Mr. Sterling: What I find a little bit odd is that you bring up the Ministry of Agriculture and Food. In my experience as the vice-chairman of the legislation committee of cabinet--

Hon. Mr. Scott: And receding in time.

Mr. Sterling: --I found that the Ministry of Agriculture and Food was probably the greatest offender in the rights of privacy.

Hon. Mr. Scott: Maybe it was. I am not saying that Agriculture should be exempt.

Mr. Sterling: When we dealt with the Grain Elevator Storage Act, we dealt with a very significant privacy issue in that particular committee which you would normally think would have nothing to do with privacy.

Hon. Mr. Scott: I am not a Conservative. I believe in all the government we need to serve the interests of the public, all the government we need. But I do not believe we need to create completely unnecessary offices to engage in examinations of things that will produce no useful results no matter how you slice it. That is George Orwell gone mad.

Mr. Sterling: Is the government going to tell the privacy commissioner when he needs to examine something?

Hon. Mr. Scott: No. I am saying the privacy commissioner should have the perfect right to look at any program or legislation he wants and to make a report. He can look at anything; he alone will judge. The amendment says he must look at and report on every single thing.

Mr. Villeneuve: Just to set the record straight, let me advise the Attorney General that the tax rebate has been in effect for many years; it was interest rebate that came in last year, and one of my questions revolves around that. Much personal financial information from different farmers who applied for this is now in the hands of the Minister of Agriculture and Food.

As a real estate appraiser, I want to know the net income or the net losses of farmers by groups, for instance. I do not think we have any mechanism in place that would protect information unless it goes out by groups. In other words, there may be only one or two 300-cow dairy farms in the province, and if someone requests that information, we would be getting very close to specific information about one or two individual operations. I would like to see some sort of mechanism in there that would say that unless there is a group or cluster of X number, it would not be identifiable. That is of concern to me.

Hon. Mr. Scott: I think we dealt with that this morning--

Mr. McCann: It is section 21(4). You are concerned about a situation where somebody is in effect trying to find out information about a whole group of individuals who are in the same--

Mr. Villeneuve: Statistical information. It may be Revenue Canada. It may be--

Mr. McCann: To the extent that it is statistical information without anybody identified, I think the person would be able to get that--as long as there is no personal information identifying individuals. If it identifies individuals, you would have to look at section 21. Particularly, this morning we were talking about subsection 21(4)--

Hon. Mr. Scott: Before we get to subsection 21(4), I take it that if it identified individuals and was not statistical, under subsection 21(3) it would be presumed to constitute an invasion of privacy and the information would not be released.

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Mr. Villeneuve: It may or may not.

Hon. Mr. Scott: No. "A disclosure of personal information is presumed to constitute an unjustified invasion where the personal information"--and then there are the categories. There is an exception to subsection 3, which is subsection 4, which we dealt with this morning; it says

that if an individual in the group represents one per cent, then it is not so personal that it should not go forward. In your case, if there are three dairy farms of that type, the information requested about X therefore represents 33 per cent of the group; that would be regarded as an unjustified invasion of privacy and the information would not be released under subsection 3, without approval. But if the percentage is lower, there is no presumption under subsection 4.

Mr. Villeneuve: Will the regulations, or the legislation for that matter, establish the minimum requirements?

Hon. Mr. Scott: There is an amendment that sets this aside, but the minimum requirements in our legislation are:

"23(4)(c)(i) the individual represents one per cent or more of all persons and organizations in Ontario receiving a similar benefit, and

"(ii) the value of the benefit to the individual represents one per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario."

If they are in a group larger than that, there will be a presumption of interference with privacy; smaller than that, no presumption. I think that will protect the kind of thing you are talking about.

Mr. Villeneuve: Thank you.

Mr. Warner: When I try to think about what the commissioner would be attempting to do in fulfilling the obligations of this act, it seems to me the commissioner would as a matter of routine take a look at each new piece of legislation and determine whether there were flaws in it with respect to privacy. Such being the case, I do not see what the big fuss would be in saying the commissioner is obligated to do this.

Hon. Mr. Scott: Because it is not simply every piece of legislation; it is every piece of legislation, every scheme of regulations and every program.

Mr. Warner: Proposed legislative schemes or government programs.

Hon. Mr. Scott: Or government programs; and as you can imagine, for every legislative scheme there are probably six regulatory schemes and 60 programs. All I say is that the commissioner should have the greatest liberty to move from program to legislation, looking for and searching out difficulties with privacy or indeed with anything else, but to require him to make a report on every such program or piece of legislation is very burdensome.

Mr. Warner: But the report could simply be, as you identified earlier, "I have reviewed the program and find no fault."

Hon. Mr. Scott: Well, you see--

Mr. Chairman: I think the problem you are going to have to handle is how far you want this thing to go. If you are supportive of this one, for example, you may read it as saying there is a requirement now for the commissioner to act as an advocate for privacy on virtually all government schemes. Depending on how this wording is finalized, I suppose it could go from one extreme, which would be that no new government program can start up

until this privacy commissioner gives his okay or approval or at least reports on it in some way, to putting an obligation on the commissioner to report after the fact on each one of these. However you want to do that, I think the gist of the argument is, how extensive will his or her role be?

The next one is that section 56 be amended by inserting after "the" in the first line the words "commissioner, with the approval of the."

Mr. Warner: We will withdraw that.

Mr. Chairman: Okay. Mr. O'Connor has an amendment, that clause 56(i) be struck out and the following substituted therefor--

Hon. Mr. Scott: Can I interrupt, Mr. Chairman? What was the one that was withdrawn?

Mr. Chairman: Ms. Gigantes had an amendment on section 56; it has been withdrawn.

Hon. Mr. Scott: Thank you.

Mr. Chairman: The next one I have in my book is Mr. O'Connor's amendment, that clause 56(i) be struck and the following substituted therefor:

"(i) designating agencies, boards, commissions, corporations or other bodies that are not institutions under clause (b) of the definition of 'institution' in section 2."

Hon. Mr. Scott: Mr. O'Connor can correct me, but I think that follows on his original definition and in that sense it is consequential.

Mr. Chairman: Yes, and I suggest we will have that argument soon. The next one is out of order.

Mr. Martel: Did they accept clause 56(i)?

Hon. Mr. Scott: No. It depends on his definition--

Mr. Chairman: Yes. When we do the definitions, that may be brought back in.

Mr. Martel: It is like "hospital."

Mr. Chairman: The next one I have is to clause 56(f), striking out "subsection 37(1)" in the second line and inserting in lieu thereof "subsections 37(1) and 39(2)."

Hon. Mr. Scott: I think we have agreed to leave out subsection 39(2). That was one of the motions tentatively agreed to this morning; so I take it we do not have to worry about that. If subsection 39(2) is left out, we have no trouble with the rest of the amendment.

Mr. Chairman: The next one I have--again I do not have a name on this one--is to clause 57(1)(a).

Hon. Mr. Scott: Guess whose it is.

Mr. Chairman: It is hard for me to guess.

The motion is that clause 57(1)(a) of the bill be struck out and the following substituted therefor:

"(a) wilfully disclose personal information knowing that the disclosure is in contravention of this act."

Hon. Mr. Scott: We do not know what that means to say that. To add "knowing" in that circumstance does not appear to add anything.

Mr. Chairman: I think what it means is that it is illegal to break the law.

Hon. Mr. Scott: But the word "wilfully" is there, and "wilfully" involves knowing; you cannot be wilful if you do not know. Since "wilful" involves knowing, why has "knowing" been put on later? Is it simply to be repetitive, is it to suggest something different or what? I think I am right in saying that.

Mr. Chairman: Are we going to the wall on this one, gentlemen, or do you have the hook out?

Hon. Mr. Scott: "Wilfully" is the highest burden that can be imposed on an accused, and I presume the use of the word "knowing" is designed to increase the burden; it does not.

Mr. Chairman: I think it is a hanging offence that is being proposed.

Hon. Mr. Scott: So do I.

Mr. Sterling: I think this weakens the section, actually.

Mr. Chairman: Since it is down the tubes, I think we will not discuss it too much further.

Mr. O'Connor has an amendment to subsection 58(1)--

Mr. Sterling: You are not dealing with my amendments as you go through?

Mr. Chairman: No. As I told you the other day, we will do the ones that are in the book that we received on the first day. Then we will go back and go back and go over your amendments that we received on the second day.

Mr. O'Connor: I have redrafted subsection 11(1); we have to deal with that when we go back through the bill. If it passes, subsection 58(1) will be relevant; if it does not, subsection 58(1) will be withdrawn.

Mr. Chairman: Okay. Let us just stand it down.

Mr. O'Connor: Leave it until we deal with subsection 11(1).

Mr. Chairman: We have one on subsection 58a(2), that it be amended by striking out "immediately" in the fourth line.

Hon. Mr. Scott: Assuming we are not giving any marks for neatness, we will not object to this amendment, but it is one of those things where, now that we are going to have "immediately" taken out, the lawyers are going to have a field day because they are going to be able to consider access that was

not immediate prior to the act but was available some time prior to the act.
But we will--

Mr. Chairman: A very gracious concession.

Hon. Mr. Scott: --be the last to stand in Ms. Gigantes's way in her desire to have lawyers get more work.

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Mr. Chairman: What have you got against the ill-informed and the unemployed here?

Mr. Warner: Why is it I have a feeling when I get his support, he is actually voting against us?

Mr. Chairman: Next is a government amendment to subsection 59a(3), that it be amended by adding thereto the following subsection:

"(3) This act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding."

Mr. Martel: Do you want to debate this one?

Hon. Mr. Scott: It is just the judge's notes. The judge sits on the bench and hears the evidence. The evidence is transcribed and that transcript is available. He gives his reasons for a decision and they are available to the public. He makes notes from time to time and the question is, should they be publicly disclosed? We think they should not.

Mr. Chairman: Is there any problem with that?

Mr. Martel: Why should the judge be above everybody else in society?

Hon. Mr. Scott: We must get over this troglodyte theory that people are above or below others. It has nothing to do with that. It has to do with disclosure. Your placement in God's firmament has nothing to do with whether it is disclosed. Forget this idea that someone is above somebody else. The issue is whether certain documents should be disclosed.

Mr. Martel: If you are so sensitive about it, I think I am right. The second you start that kind of rant, I figure I must be on the right track.

Hon. Mr. Scott: You would.

Mr. Martel: You have this funny sense that--

Hon. Mr. Scott: It is not that a judge is above anybody.

Mr. Martel: --any time anyone talks about the law, you can just ramrod.

Hon. Mr. Scott: The judges do not have that view of me.

Mr. Martel: I know.

Hon. Mr. Scott: It is not whether anybody is above anybody else.

Mr. Martel: No, I know.

Hon. Mr. Scott: The issue to be decided is, is there an interest in favour of nondisclosure? Our theory is that there is an interest in favour of allowing a judge to make notes on the bench with the understanding that some person will not have the right to demand access to them.

Mr. Martel: Some people are more equal than others, is what you are saying.

Hon. Mr. Scott: Some people more equal than others? It is just enough to boggle the mind.

Mr. Martel: I have listened to lawyers for 20 years around here.

Mr. Chairman: Excuse me for a minute. You are trying to get support for this. You are not trying to lose votes here. Try to be friendly to these folks.

Mr. Martel: For 20 years, I have watched lawyers' shenanigans around this place when they get into anything dealing with law, and they are just so far ahead of everyone else.

Mr. Chairman: I have never been of that view. Are there any supporters of this atrocious amendment? I think it might actually carry if we can keep the Attorney General down.

Mr. Sterling: How does it deal with the quasi-judicial setting?

Hon. Mr. Scott: It does not. The quasi-judicial tribunal members, in so far as they may make notes and in so far as those notes come within the custody of government, may be obliged to disclose them. We had to draw a dividing line somewhere and we drew the line at judges' notes. I think the practical reality is that many tribunal officials, the chairman of the Ontario Labour Relations Board as well as judges, may make notes and then destroy them at the end of the day--there is no compulsion to retain those notes under any statute--or may take them home. That is to say, they are not within the custody of government and therefore not producible. But if the chairman of the labour relations board files his notes in his office in a filing cabinet, they would be producible.

There is an interesting question there, frankly, about whether they should have the same protection. One of the practical dilemmas is that you have to draw the line somewhere and judges is one place to draw it. When you get into administrative tribunals, you have to ask yourself behind what tribunal will we draw the line: the Ontario Energy Board, the labour relations board, the assistant deputy minister who makes a statutory power of decision under an act? Where?

Mr. Warner: I just want to make sure I have this right.

Mr. Martel: Do not get your head blown off.

Mr. Warner: The argument being used here to protect judges' personal notes is similar to the argument used by the White House staff in protecting Mr. Reagan's personal diary from cross-examination by the court or by a committee of the Congress. Is that the same ball park we are talking about?

Mr. Martel: No, not even the same game.

Hon. Mr. Scott: What is the question?

Mr. Warner: Are you using the same line of logic as the White House staff?

Hon. Mr. Scott: Assuming the question is not simply designed to be amusing, which would certainly tax it, the reality is that the comparison you want to make between the notes made by the executive has no application, because all notes made by all government executives are producible under the freedom of information act. This act is designed to see to it that any notes or record made by any government official, from the Premier (Mr. Peterson) on down, are producible to the public. What we are dealing with here is precisely the judges' notes, and the notes of Reagan or an executive officer have no relevance. It is without question in the United States that the judges' notes are exempt from disclosure.

Mr. Warner: So the Premier's notes are not exempt but the judges' notes would be.

Hon. Mr. Scott: Right.

Mr. Warner: Placing the judges above the Premier.

Interjections.

Mr. Martel: Here comes another lecture.

Mr. Warner: I am sorry.

Hon. Mr. Scott: It is this stratified antagonistic view of the world in which we live that I find it so difficult to deal with. I suppose you would think that if somebody got a reduced fare on the subway that was to place that person above all those who do not, so that when we give senior citizens a reduced fare on the subway we have placed them above ordinary citizens. Of course, we have not.

Mr. Martel: You even get silly with it, do you not?

Hon. Mr. Scott: No.

Mr. Martel: You even carry it to a point where you are silly.

Mr. Chairman: I originally thought this amendment would carry.

Mr. Martel: I just thought I would ask if that is a reason. He convinces me I should vote against it, just by his antics.

Hon. Mr. Scott: If that is so, then I am making some headway.

Mr. Martel: Because of the fact you want it carried, you might not make any headway at all.

Mr. Sterling: Did the accord expire?

Interjection: I think it just did.

Mr. Chairman: The next one is, again, a government amendment to section 59b, that it be amended by adding thereto the following section

"59b. Any right or power conferred on an individual by this act may be exercised,

"(a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

"(b) where a committee has been appointed for the individual or where the Public Trustee has become the individual's committee, by the committee; and

"(c) where the individual is less than 16 years of age, by a person who has lawful custody of the individual."

Hon. Mr. Scott: I think we dealt with this issue on day one and the question here is, when you are seeking a claim to information or seeking to defend a claim to information on a privacy ground or some other, if you are within these categories, who will represent you? That is to say, if you are under 16 or if you are dead or if you are incompetent. All this section does is set out the persons who represent persons in those categories.

Mr. Martel: I better be careful.

Mr. Chairman: I know you are not under 16 and I know you are not dead, but--

Mr. Warner: It is a very straightforward question. Why do you say 16 instead of 18?

Hon. Mr. Scott: We have been trying to pick 16 as the age at which consent is not required in a lot of legislation, running all the way from the Family Law Act through the child welfare legislation, through adoption legislation and so on. As you know, the age at which you vote, the technical age of majority, is one age you can select; 16 is increasingly becoming another age that has an appropriate characteristic, driver's licence and so on, and then you can go down through 14 and 12. We have been trying to focus in the last year or two on 16 as the age when an individual can begin to grant consent to a wide variety of decisions from adoption on through. That is why we picked 16 here. We could have picked 18 but I think 18 is a little high, and it seemed to us that there was no justification for going below 16.

Mr. McCann: One practical issue there is that you get a certain number of people aged 16 and 17 who are employees of an institution, let us say in the summer, and this would mean they would directly have access to their own employment records. You may sometimes get people at younger ages who are employees too, but as the Attorney General is saying, 16 seems to be the most reasonable dividing point.

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Mr. Warner: Okay.

Hon. Mr. Scott: The other point Mr. Ewart makes--related to the fact that we picked 16 in the housing rights area under the Human Rights Code--is that 16 has been fixed as the age at which you can withdraw from parental control. While you are not old enough to vote at 16, you are old enough under

the law to withdraw from the control and direction of your parents and begin to make a wide variety of decisions on your own. In this context, we thought 16 was the right age.

Mr. Warner: If I could be permitted one more question, should we interpret a personal representative to be an executor of the estate?

Hon. Mr. Scott: In 1?

Mr. Warner: Yes. Is that inclusive?

Hon. Mr. Scott: It would include executor, I think.

Mr. Warner: It includes but it is not exclusive?

Hon. Mr. Scott: There would be personal representatives who are not executors.

Mr. McCann: That is right, who have been appointed by the court to have the administration of a will.

Hon. Mr. Scott: An administrator is not an executor but is a personal representative.

Mr. McCann: The two categories would primarily cover someone who is named as an executor in a will or, where nobody is named as executor in a will or where there is no will, a person who has been appointed by a court to look after the estate of a deceased person. Those are the two main categories of personal representatives.

Mr. Warner: It means, however, where there is no executor and no will, the court would have to identify who the personal representative is, rather than some individual simply presenting himself as being the representative.

Hon. Mr. Scott: The court does that even now. I suppose the issue is that if a claim came to be decided with respect to the release of the information and somebody was deceased, it is hard to tell how it would be relevant in the light of the rest of the act.

Mr. McCann: It might help to say that the person who was claiming to be the personal representative would have to establish that he or she was the personal representative to exercise the right under this section, which he or she would be able to do either by a court order or a probated copy of the will or something of that sort. This is intended to be very narrow; it is just to deal with the situation where there is a need to get access to information to wind up the estate.

In other cases, where it might be necessary for one reason or another to get access to information about someone who had been dead less than 30 years, it would be a question of a balancing test under section 21 and the head would in effect have to consider whether it was an intrusion on the privacy of the deceased person or not. This is just to deal with the situation of winding up an estate.

Mr. Sterling: What would happen on the other end of it, not where somebody is seeking information but where someone is trying to protect the anonymity of the details of the person's death, for instance, the medical

information? For example, where somebody is seeking information and there is no will to probate, how does a spouse, who was not appointed by a court, enter the fray?

Hon. Mr. Scott: I would presume that information would be protected from disclosure under the privacy provisions for how long--30 years?

Mr. McCann: Yes. We have a provision that says--

Mr. Sterling: I was talking about the right of intervention.

Mr. McCann: In order to make sure that nobody else got access.

Mr. Sterling: That is right. I know it would not happen under this particular information section. We had a notable entertainer die in the United States and journalists were going after the cause of his death. Under this act, how does somebody in that kind of circumstance protect the interests of a loved one from information?

Hon. Mr. Scott: The issue is that when a stranger seeks disclosure of private information about somebody who is dead, it would be the obligation of the head to give notice that the request had been made to the person, if he thinks he is alive, in which case the letter will arrive at the person's home addressed to him even though he would be dead, or to his personal representative who, in the normal case, would be his wife or next of kin.

It is then required, under this scheme or any other, for that person, usually the widow or widower, to come forward and say, "I propose to resist the release of this information." If there is a dispute about the right of the widow or widower to represent the interest of the deceased, it will then be up to the head or the commissioner to decide whether that person does have the representative capacity and, if necessary, he might request that probate or administration be obtained if there is a dispute.

For example, there might be two children of the testator, both of whom got the notice. One says, "I think the information should go public." The other says, "I think it should not." In those circumstances, the head or the commissioner might say: "You cannot both represent your father. You will have to ask the court to decide who is to represent your father."

Mr. Chairman: Any other questions on that one? I take it there is general agreement on that. The next one is out of order. We can now go to Mr. Sterling's amendments.

The Acting Chairman (Mr. Warner): We have a little package from Mr. Sterling. The first one I have in front of me says, "I move that section 3 of the bill be amended by deleting 'may' in the first line and substituting 'shall.'"

Mr. Sterling: I would have preferred that this act name a particular minister to be responsible for the act. My only concern is that the public should have somebody to deal with, and therefore I would make it mandatory.

Hon. Mr. Scott: In effect, it is mandatory anyway. "May" is capable of being mandatory. I have no objection to it. I would have thought it unnecessary, but if you want to have it, by all means.

The Acting Chairman: This one is okay?

Hon. Mr. Scott: The problem is that in many other statutes we have used "may" in its mandatory sense for this kind of act, say, of the Lieutenant Governor in Council. Do we really want to deviate from that historic view? If we do and we introduce "shall" here, with the next statute up the pike where we have used the traditional language and have "may," someone is going to say it means something different. I do not know that it is a big deal.

Mr. Sterling: Which does legislative counsel prefer? Am I putting you on the spot?

Ms. Baldwin: I am content with the Attorney General's answer.

Mr. Sterling: I withdraw the amendment.

The Acting Chairman: The next one is to delete subsection 4(4) and to put in its place--

Mr. Sterling: This is very similar to Ms. Gigantes's amendment. The wording is slightly different. We can discuss it when we discuss that issue.

The Acting Chairman: When we come back to it. Fair enough.

Hon. Mr. Scott: The effect of this, I take it, is to create an assistant information commissioner and, separate, an assistant privacy commissioner?

Mr. Sterling: Yes.

Hon. Mr. Scott: I take it that is a function of your theory that in some sense they should be divided into two parts?

Mr. Sterling: That is right.

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Hon. Mr. Scott: You would not, for example, be content with the subsection saying, "The commissioner may appoint two officers of his staff to be assistant information and privacy commissioners." In other words, giving them both total assistant power, but having two. You want them divided.

Mr. Sterling: My objective is I want a polarization into two.

The Acting Chairman: To be fair, I think that is the intent Ms. Gigantes wanted as well, to have two separate divisions.

Mr. Martel: Did you say "The commissioner may" or "The commissioner shall" when you made your wording about two people? I think the real key is "may" or "shall" again.

Hon. Mr. Scott: No. Frankly, I do not enter into that fight. I was just trying to get from Mr. Sterling--and I think I have it now--whether he wants two polarized officers. He has made it plain that he does, so I understand what he is doing.

The Acting Chairman: This amendment will be considered when we consider Ms. Gigantes's amendment. The wording of the two is almost identical.

The next one I have in front of me is that subsection 10(2) be deleted and a substitution provided. Norm, do you want to speak to that?

Hon. Mr. Scott: Could we just leave this to look at? We do not understand this to be any different than the existing subsection 10(2). Perhaps Mr. Sterling can tell us. They may have been drafted at the same time, when we were both away working up our amendments. I am not clear at the moment whether our draft is different from Mr. Sterling's. If it is, that is okay. If it is not, you can agree on which one is better. Again, this may have been a case where one set of drafts was proceeding at the same time as the other.

Mr. Sterling: This reverses the language of the severability section. It puts a positive onus on the head to release as much of the information as he possibly can in a record, whereas yours does it in reverse in terms of the wording. It says, "The head shall release the information that would be disclosed unless it is not reasonably severable from the information that falls under one of the exemptions." I prefer the wording of that section in that it puts a positive onus on the head to release as much information as possible.

Hon. Mr. Scott: Perhaps we could leave it to legislative counsel. I would have thought that down to your words "can reasonably be severed" or our words "it is not reasonably severable," we have the same idea in place in almost exactly the same words. The difference is that you say "without disclosing the information that falls under one of the exemptions;" we say "severable from the information that falls under one of the exemptions." I am just not certain which is the stronger. Maybe legislative counsel can assist us there.

Ms. Baldwin: I would not mind some time to consider it.

Hon. Mr. Scott: You probably did not draft either of these or you probably drafted both of them.

The Acting Chairman: Let us protect the counsel. We can leave both of those to be considered and move on to section 12, where Norm suggests changes to clause 12(b), clause 12(c) and clause 12(d).

Mr. Sterling: All three amendments are somewhat similar. What they do is restrict in some ways the documents that could be excluded by including words to say this is a record created solely to present proposals to cabinet; a record containing background explanations, analyses of problems or policy options created solely for presentation to the executive council. I would like these words in so that not everything that is prepared for a minister for ever is not divulged to the public.

If the minister has an idea that he is going to make presentations to cabinet, then he should say so and that should be it. But if he asks for a background report on such-and-such a matter, then I think that should be available to the public because the public is paying for it. You cannot have everything that is prepared for a minister claiming this exemption.

Hon. Mr. Scott: The only difficulty I have is that we have our own amendment about what the definition of the document to be excluded is. The main thrust of this proposal, as I understand it, in so far as it differs from ours, is the "solely" concept. The trouble I have about this is that there are not many documents created for one single purpose. A document that is created for submission to cabinet may serve a variety of other purposes. It may serve the purpose of advising the Premier's staff about an issue that is current, in the sense that it may be circulated into the Premier's office even though it is going to cabinet.

If you prepare a cabinet submission, you want the principal secretary and the Premier's staff to know what you are doing. You know if you do not, you will have difficulty with the Premier when you come to cabinet, so you prepare the document, which is a cabinet submission. You send it to cabinet office, which is where it goes on the way to cabinet, and it gets circulated out of cabinet office to cabinet ministers and the Premier's bureaucracy.

It would be difficult to say that was created solely for a purpose; primarily, probably, but solely, no. It seems to me what we want to do is to define the thing without getting into that kind of debate, but I leave it up to you.

Mr. Sterling: I think the issue is that the exemption section is too wide at this particular time. It would cover almost anything that was prepared for the Premier or other people by civil servants.

Hon. Mr. Scott: The purpose of section 12 is not to exclude from disclosure a particular document, a particular piece of paper, no matter what it is headed. It is to exclude from disclosure any document that will disclose the deliberations of the executive council, including the following. What is protected is not any particular document but anything that will disclose what cabinet discussed.

There will be many documents that are not prepared solely for cabinet that will show what cabinet discussed. If you are into "solely" and you are saying, "I do not care whether the world hears what cabinet discussed; all I am doing is exempting documents that have 'For Cabinet Only' written on the top of them," then it seems to me you have to fundamentally rewrite section 12. In other words, it is a more elaborate examination than simply the introduction of the word "solely," because you have not focused on the opening words of the section. However, that can be debated, I guess.

The Acting Chairman: You will recall that Ms. Gigantes has four amendments proposed to this section.

Hon. Mr. Scott: Yes, but these are Mr. Sterling's.

The Acting Chairman: Yes, Mr. Sterling has these. There is some understanding that at least certain documents in cabinet should be exempt. The question is how to rework this one.

Hon. Mr. Scott: If that is the sense we have of it, we are not focusing on what section 12 does. Section 12 does not speak to any particular documents. It says, "A head shall refuse to disclose a record"--that is to say any document--"where the disclosure would reveal the substance of deliberations."

For example, if I came back from cabinet myself and wrote down a memo of what had been discussed in cabinet, that little note in my file would be excused from disclosure under section 12, not because it is a policy submission or because Mr. Carman signed it or drafted it, but because it would disclose the substance of deliberations of the executive council meeting.

It does not matter what the document looks like, who prepared it or for what purpose it was prepared. If it discloses the cabinet discussion, then it is exempt, and clauses 12(1)(a), (b), (c) and so on are simply examples for the clarity of the original.

If you say that clauses 12(1)(a), (b) and (c) have to be prepared solely for a particular purpose, it seems to me you are undercutting the opening words of the section. If you want to undercut them and change them around, I understand.

Mr. Sterling: I guess my problem is that you could cover almost any kind of report that a minister would prepare as coming to that particular conclusion. Any number of background reports that were collected over a period of time and touch on the fringe of a cabinet proposal--

Hon. Mr. Scott: Let us take an extreme case. Let us take a case of a colleague or a bureaucrat who is in cabinet and prepares a memo of what cabinet talked about.

Mr. Sterling: That is clearly excluded.

Hon. Mr. Scott: Is it clearly? How is it excluded?

Mr. Sterling: Under clause 12(1)(a).

Hon. Mr. Scott: It was not prepared for cabinet. It was certainly not prepared solely for cabinet. It was, in fact, prepared for the Toronto Sun.

Mr. Sterling: But that is a minute.

Hon. Mr. Scott: Whatever it is, it does not meet the test for nondisclosure that you established, that it was solely prepared for cabinet.

Mr. Sterling: I did not say that.

Hon. Mr. Scott: That is what your amendments say.

Mr. Sterling: I am talking about clauses 12(1)(b), (c) and (d).

Hon. Mr. Scott: I am sorry. Yes, but it is not an agenda, minute or other record.

Mr. Sterling: Sure it is.

Hon. Mr. Scott: All right. Maybe it is.

Mr. Sterling: Sure, it is. I am talking about the background material that is on the periphery of a cabinet submission that can be all scooped into the same basket. I think I will pursue that one.

The Acting Chairman: Section 13. Here Mr. Sterling wishes to add, "or where the head of a public institution has publicly cited as the basis for making a decision or formulating a policy." Do you want to offer some explanation?

Mr. Sterling: Yes, I would like to. If, for instance, a head says that a minister stands up and says, "We are moving this way because of the XYZ report," once he publicly states that as the basis of his decision, I think he should be required to reveal that report as being within the public realm. I do not think you could stand up and say, "I have a secret report on which I am relying to make this decision," and then not reveal that report. I think it should be accepted as a relatively easy thing to--

Hon. Mr. Scott: I understand and have no trouble with the case you describe. I am just thinking more generally. For example, a decision is often taken on the basis of advice that you are given. I take a decision not to appeal a decision on the basis of what I have been told by people in my ministry. As soon as I take that decision, if I give any ground for it, have I then authorized the disclosure of all that information?

Mr. Sterling: If you refer to that report, yes.

Hon. Mr. Scott: It is not a report. It does not have the formality of a report in a bound cover. I say, "On the basis of the advice my public servants have given me, I do not believe that an appeal in this case is warranted." They have written me letters or given me advice. Does that advice, which might otherwise be exempt from disclosure, become disclosable because I refer to it? If it does, then you run one of two risks. It either means that all advice to a minister is disclosable as soon as he acts on it and goes public, or it means that no advice is given.

Mr. Sterling: No, not necessarily. I am talking about where you cite the fact that you have acted upon a report.

Hon. Mr. Scott: But I say I am acting on the advice the Deputy Attorney General has given me in this case, that an appeal should not be taken.

Mr. Sterling: I would argue that this would not include that.

Hon. Mr. Scott: Why?

Mr. Sterling: Because you are not formulating policy, for one thing.

Hon. Mr. Scott: I am making a decision.

Mr. Sterling: What would be the problem with revealing that?

Hon. Mr. Scott: I suppose in one sense nothing would be the problem with revealing it except that then, once any decision is communicated, all the advice you get from any public servant, one way or the other, becomes public. You should ask, "Why should not the advice of every public servant become public on every issue as soon as the decision is made?" The risk with that, and what the act is designed to protect, within limits, is that you will not get from public servants frank advice in every instance. You will in some, but you will not in others, and everybody knows that.

What we are trying to weigh here are the interests of disclosure against the interests of sound decision making. We are perfectly prepared to, and would, let you have any reports that are made to government, any input of that type. We are certainly anxious to let you have any information that relates to you, but should we be required to let you have every piece of advice that every public servant gives us before we make a decision, as soon as we make that decision, that is going to fundamentally alter the way government works and not to any advantage. There will be no citizen per se who will be advantaged by that. It will simply be that every public servant knows that every piece of advice he gives is going to be on the front page of the paper.

Mr. Sterling: Maybe that is good.

Hon. Mr. Scott: To be frank, I think it is probably not good. I do not think that public servants should be exposed to that risk, that a candid,

even if negative--let us assume you are dealing with some issue about whether something very popular should be developed in the constituency, whether a domed stadium should be built in Metropolitan Toronto with provincial funds, which I gather was popular in some places where I did not live, and some public servant reports: "No, we recommend against that, Minister. We think your money should be devoted to this activity rather than that activity." That advice, together with the advice of those deputies who said it should be built, will be on the front page of the paper within 24 hours of the decision. Is that really what you want?

Mr. Sterling: Only if the minister has cited that.

Hon. Mr. Scott: The minister can fake it. He can say, "I have made the decision and if I got any advice from anybody around here, I am not going to tell you because if I did tell you, the advice would be public." Come on, let us be practical. Everybody knows that the minister in making a decision, if he is a good minister, is going to ask for advice and is going to listen to it and take it as he thinks appropriate.

The Acting Chairman: What do you want to do?

Mr. Sterling: I am going to pursue it.

The Acting Chairman: All right. The next one I have is an amendment to subsection 14(4), "or record on the degree of success achieved in a law enforcement program including statistical analysis."

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Mr. Sterling: What number are we at?

The Acting Chairman: I have subsection 14(4), an amendment of yours.

Hon. Mr. Scott: The NDP has an amendment like this, and we have discussed it in that context.

The Acting Chairman: Did you accept that one?

Hon. Mr. Scott: I do not think we accepted it. I think, like everything else, it was put aside to be dealt with later.

The Acting Chairman: And the wording is--

Mr. Sterling: Were they similar?

Hon. Mr. Scott: I assume it is similar to what the NDP wants.

The Acting Chairman: Unless I am mistaken or missed something, the one that Norm has proposed is to a different section than what Evelyn had proposed.

Mr. Martel: Right; hers was to add a 14(5).

The Acting Chairman: Norm, do you want to explain?

Mr. Sterling: Yes. Subsection 14(4) is the disclosure section; the law enforcement section is a very wide exemption section because it gives almost a blanket exemption to the law enforcement people. All this addition does is it adds to those kinds of reports that they would not be exempt from.

Hon. Mr. Scott: I would like to leave it to be voted on, but I do not think we are going to have any trouble with this one.

Mr. Sterling: It also happens to be in Bill 80.

Hon. Mr. Scott: It also happens to be where?

Mr. Sterling: Bill 80.

Hon. Mr. Scott: Oh, my God. Can I take that back?

Mr. Sterling: I thought I would tell you that after you said that.

Hon. Mr. Scott: There was some good stuff in there. I guess we have covered it all now.

The Acting Chairman: Do we have one of these backhanded agreements again?

Hon. Mr. Scott: No.

The Acting Chairman: So that one is okay.

Hon. Mr. Scott: Tell me about these Bill 80 things before you bring them up, will you?

Mr. Sterling: Okay.

The Acting Chairman: You should have a little flag with you for Bill 80.

Section 27 is the next one of your amendments that I have. It is proposed that clause 27(1) of the bill be amended by striking out the words "that is reasonable in the circumstances" after the word "time" and substituting therefor "not to exceed 45 days."

Mr. Sterling: This is the time period for reply. This is put together with another amendment; I think it is the next one, under section 48. There are a number of time periods that are involved here; one is in section 26, one is in section 27 and the other section where I deal with it is 48.

Basically, I do not think the extension of the time period that is set out in section 26 should be for ever; there should be a maximum on all of these time frames, notwithstanding the problems of producing any kind of report. In my view, section 27 is not adequate because going to the commissioner to review an extension period or a period of time is of little help when you are dealing with timely information. Therefore, I think it is necessary to have a maximum time frame on which public servants must act within the best of their ability to produce information; I set that out in a later section as 90 days, and I limit the extension period to 45 days.

Hon. Mr. Scott: Before we get to this section, the last amendment, which the honourable member was careful to point out was found in Bill 80, is of course not found in Bill 80. In Bill 80 there are words like that but there is a loophole big enough to drive a cab and a truck through, which is what was found in Bill 80, and of course that loophole has been taken off since it is our bill, though it was present when the Tories produced their bill. Let us not give the impression that anybody is fooling anybody about anything.

Mr. Sterling: I am trying to get the best of both bills here.

Hon. Mr. Scott: No. But you will not suggest to the committee that an amendment you propose is the same as in Bill 80 when in fact the provision in Bill 80 allowed a major override to cabinet to exclude disclosure of the information in its entirety.

Mr. Sterling: You do that here too, I understand.

Hon. Mr. Scott: No. I have not done that.

Mr. Sterling: You do that under section 50 as well.

The Acting Chairman: Is this a discussion on something we have already dealt with?

Hon. Mr. Scott: Yes. I just want--

Mr. Martel: He might have been out of order and you might have wanted to call it--

Hon. Mr. Scott: I just want to make the point that--

Mr. Martel: No. We have passed the section.

Hon. Mr. Scott: All right. But let us not have those games going on, because the override in Bill 80 allowed cabinet to exclude it.

Mr. Sterling: I think the earlier one was very similar--

Interjections.

The Acting Chairman: Can we get back to the more exciting challenge of discussing how many days should be allowed?

Hon. Mr. Scott: Under our provision, the head can grant one extension of time, and that extension of time can be appealed to the commissioner to judge whether the extension is right or just or appropriate. The difficulty about fixing a maximum extension is that it does not take account of the various kinds of information that may be required to be obtained. For example, if a historian writing a thesis wants copies of all the letters that Oliver Mowat wrote to a member of his cabinet in a two-year period, we can find that, but we may not be able to respond to that within 30 days or within 45 days.

Mr. Martel: They can go to the university themselves, and their archives.

Hon. Mr. Scott: But we intend this freedom of information act to be open to historians and archivists and a wide variety of businesses and individuals who want information. There is to be no restriction on those who may apply. The downside is that the kinds of requests you get are going to be of a wide variety. I simply say that when you cannot predict what that variety is, why are we fixing 45 days, particularly when there can be no further extension? If someone asks for all the letters that Oliver Mowat wrote to his Minister of Agriculture in a two-year period and we do not produce them in 45 days, what is going to happen?

Mr. Sterling: Under this act, nothing happens.

Hon. Mr. Scott: Then why fix 45 days?

Mr. Sterling: Why not put in a time limit in which a civil servant at least knows he has to operate? If he goes over 45 days, there is no sanction within this act against him.

Mr. Martel: Why do you not flip a coin and try six days?

Mr. Sterling: I do not care what the time limit is. I just want a time limit.

The Acting Chairman: You want a time limit.

Hon. Mr. Scott: By fixing an arbitrary period, the public servants will say: "Are you out of your mind? We do not have a snowball's chance of complying with this." What you should do instead is force the head to consult with his public servants and select a time, knowing that the commissioner in the end will be the judge. In this case, all the extensions are going to be 45 days.

Mr. Martel: Can we not put something in which says that when they are giving notice, they have to indicate roughly the ball park we are in? That would allow someone then to go to the commissioner and say, "We think that is too long."

Hon. Mr. Scott: That is what we have. I believe it to be an excellent idea.

Mr. McCann: Subsection 27(2) says that where a time limit is extended, the head has to give notice setting out the length of the extension, the reason for the extension and that the person who made the request may ask the commissioner to review the extension.

Mr. Martel: Okay.

Hon. Mr. Scott: I believe you have to concede that the head may be full of baloney. He may be picking some---

The Acting Chairman: Do you want to pursue this?

Mr. Sterling: Yes.

The Acting Chairman: Okay. As we know, there are other time limits that are going to have to be debated as we go through.

The next one I have is to section 48.

Mr. Sterling: Yes. I am concerned about this section because, as I understand it, under the federal act there have been a number of situations where the decision of the commissioner has dragged on and on in terms of making his recommendation. What I plan to do by adding a subsection 15 is to say that the commissioner shall commence the inquiry. That does not say he has to finish it within a period of time. I just do not want the matter put off for ever and ever. It puts some slight time restriction on him.

Hon. Mr. Scott: The old Residential Tenancies Act had the provision that you must commence an inquiry by a certain date. What they found out

happens all the time is the hearing is opened and then adjourned over the objections usually of somebody. The commissioner rules it will be adjourned; so all you do is open the inquiry and you adjourn it. Frankly, it seems to me that serves no purpose.

If you want to say the commissioner shall conclude his inquiry and give his reasons for judgement within a certain time frame, and if you want to expose him to that pressure, at least I understand that because it is designed to shorten the time period in which a decision is given. But to say the inquiry will open on a certain date does not shorten the time frame at all; it simply leads to an adjournment, opposed by one side, granted by the commissioner, in which the thing extends its normal length. Frankly, I do not like either of those, but if your instinct is to--

Mr. Sterling: I thought this was softer.

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Hon. Mr. Scott: But it is pointless.

Mr. Sterling: I do not think it is pointless. What it does is it puts some pressure on the commissioner to get on with it. I do not imagine the work of the freedom of information commissioner will be as great as perhaps that of the Residential Tenancy Commission.

Hon. Mr. Scott: I think it is going to be very substantial in the first couple of years, with thousands of cases. In four or five years, it will phase off as ministers and heads get some sense of how he is going to rule and as he builds up a series of cases, but I think we must face the reality that in the first four or five years, there are going to be hundreds of decisions.

It is a minority government; you can do what you want. I have no objection to a process that is going to shorten it, but a process like the one under the Residential Tenancies Act which is simply going to lead to an adjournment, it seems to me--but if you want to have it--

Mr. Sterling: Okay. I give notice that I will put in another amendment to complete the inquiry within a certain period of time.

Hon. Mr. Scott: Now I have real problems with that.

Mr. Sterling: You suggested it.

Hon. Mr. Scott: But you see--

Mr. Sterling: You cannot have it both ways.

Hon. Mr. Scott: Yes, you can have it both ways. Let us be perfectly frank about what we are doing. We are creating a system that is going to be run by people. You can build in a requirement that a decision be given within 90 days. All that means is that you are going to get some very lousy decisions. You are going to force people to argue cases before they are ready. You are going to require that the appeal take place quite often before the documents are found. You are going to create a system that is unmanageable.

It seems to me that once you decide what your process is, you want to establish time limits that are meaningful. Can you think of a single example of a time limit where we require a judge to produce a decision within a given

time? Mr. O'Connor may be able to think of some, but I cannot--except there used to be one under the police arbitration act, but there was an extension power; the extension was always requested and always granted.

Mr. Sterling: But you are dealing with a different animal here. You are dealing with information, and information is not any good unless it is timely. Therefore, if you allow the process to go on and on, it loses all meaning, in most cases, after a certain period elapses.

Hon. Mr. Scott: The historian who is seeking information from government is not under that kind of time frame; some are and some are not. I would have thought that a commissioner confronted by a wide variety of requests, with a very limited capacity to deal with them all, if he were being practical, would try to separate out those cases that should be dealt with first because they were of critical importance to ordinary citizens right now and leave the cases that dealt with historians to be dealt with later because the theses can be produced at greater leisure. If all those cases are going to be required to be opened in 45 days or to be decided within 120, that kind of discretion is not going to be possible.

Mr. O'Connor: I would like to cite another example. You cite the one of the Residential Tenancy Commission and the problems of opening and adjourning.

Four or five years ago, the Attorney General's ministry issued a directive to the provincial court judges that where practicable, cases were to be heard within 90 days of the charge being laid. The effect of that, at least in the jurisdiction where I practise, was that judges used that directive to require counsel to get themselves prepared to slot in within 90 days, and a substantial number of cases that might otherwise have dragged on somewhat were sped up and heard within 90 days. Because of the length of the trial and other problems, some went beyond that time.

To the extent that an amendment like this puts out some directive to try to get the thing on as quickly as possible I think it is useful in that perhaps the majority will be heard or commenced within the 45-day period. Sure, some will fall outside that period, and you might ask, "What is the sanction if it does fall out?" I think it is helpful to put in the time limits throughout the act to get the people on notice that they have to act. There will be responsible people who will do that; some will not, but most will.

Hon. Mr. Scott: You may be right with that experience. But let me try to allay one sense of concern. This commissioner is not going to be a functionary of my ministry. He is not going to be one of the bad guys you are going to have to whip into attention. He is going to be--

Interjection: He is going to be a functionary, though.

Hon. Mr. Scott: But he is not going to be a person about whom you may say, "That's Scott, the politician, distorting the process."

Mr. O'Connor: But he will be a Liberal hack appointment, will he not?

Hon. Mr. Scott: No. He might even be a Conservative; there are very few of them about, but we are getting as many into gainful employment as we can.

Interjection: There are going to be a lot more after the next election.

Mr. Martel: All the lawyers shifted in 1984.

Hon. Mr. Scott: True, but essentially this will be an official responsive to the assembly, who is going to be interested in doing the public work. Frankly, I do not envisage him as anything other than a quasi-judicial officer with an administrative staff. I cannot believe it is going to be his instinct to delay unnecessarily. If you want to say the hearing should be commenced within 30 days if practicable, I have no problem with the very thing you suggested.

Mr. O'Connor: It gives him some weight to deal with the staff, and in dealing with you for more money and more staff, to say: "If you want us to start these things in 45 days, give us the wherewithal."

Hon. Mr. Scott: If he did not want to begin within 30 days where practicable, you would wonder why we appointed him. If you want to put in "where practicable," I am--you know.

Mr. O'Connor: We can deal with this when we are voting on it.

The Acting Chairman: We are going to come back to this one. Norm may wish to consider using your words "where practicable," or altering it, as you mentioned earlier.

The next amendment is to section 57.

Mr. Sterling: It is an addition to the bill.

Hon. Mr. Scott: The guy who opposed the 30-day time limit was the one who--

Mr. O'Connor: Incidentally, it is 90 we are talking about, not 30. Read the amendment.

Hon. Mr. Scott: Oh.

Mr. Sterling: It was 90, 45 and 30. The process is speeding up faster than anything I have ever seen in government.

Under this bill, there is no sanction on a head of a government who absolutely refuses to follow the orders of the information commissioner.

Hon. Mr. Scott: The Jim Snow amendment is what we are going to have now.

Mr. Sterling: This section, 57a, basically puts punch into what the commissioner decides and makes those who do not follow his orders guilty of an offence, with a maximum fine of \$5,000. I cannot see why there would be any objection.

Mr. Martel: Why would we not just throw him out? If you were to say to me that you have somebody who will not follow orders, I would want him out of the whole business. He should not be allowed in the ball game.

Hon. Mr. Scott: What we have at the moment--let us compare them to see where they are; I have no trouble with this. "No person shall...wilfully disclose...." It seems that "wilfully" is--

Mr. Sterling: You are dealing with personal information. I am dealing with the whole act.

Hon. Mr. Scott: I am dealing with the offence section under 57. I begin by saying it seems to me that "wilfully" is a duplicate of "knowingly," and I think you might want to use "wilfully" rather than "knowingly."

The subsection 57(1) that is there imposes a penalty. You add three categories to it. Have I got this right?

Mr. Sterling: Yes.

Hon. Mr. Scott: The first is obstructing the commissioner. I take it that the appeal from the commissioner is not obstructing. Is it?

Mr. Sterling: No.

Hon. Mr. Scott: All right. I have no trouble with that. I would add one rider, that the consent of the Attorney General to a prosecution be required. What you are going to have here is people who are dissatisfied laying private informations all over the place.

Mr. Sterling: I do not have any objection to that addition.

The Acting Chairman: Where should that be added?

Hon. Mr. Scott: I presume it would be a subsection. I would want to look at it overnight, but I have no problem with (a), (b) or (c).

Mr. Martel: Nor do I, but the penalty is not severe enough.

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Hon. Mr. Scott: The point is made to me that the fine under our section should be the same as the fine under your section. Ours is \$2,000; yours is \$5,000. If you want to make them both \$5,000, that is fine with me.

I would like a "consent of the Attorney General" paragraph, because I frankly feel there are going to be a number of people who, with the best will in the world, may be refused information and will have a major sense of grievance. That is not to say they are right; that is to say they have a major sense of grievance.

Mr. Sterling: I do not have any objection to that.

The Acting Chairman: Could we leave it then? The Attorney General suggests we come back with another wording tomorrow.

Hon. Mr. Scott: This wording seems fine. We will just restructure it.

The Acting Chairman: So that is okay with you now.

Hon. Mr. Scott: Is this in Bill 80 now?

The Acting Chairman: It is straight out of Bill 80.

Hon. Mr. Scott: Let me look at the bill so I can see the loopholes.

Mr. Sterling: The consent was in mine.

Hon. Mr. Scott: Was it? Was there a consent provision?

Mr. Sterling: Yes. I was just checking up on your counsel here, to see how fast he was on this one.

Hon. Mr. Scott: I have no other amendments from you. Do you have any new ones?

Mr. Sterling: I suspect I am going to introduce an amendment to section 19 dealing with the solicitor-client exemption. Basically, what Williams does is he limits the solicitor-client relationship to certain circumstances. I will introduce an amendment tomorrow in that area.

I will probably have an amendment on section 34, which we discussed today, dealing with the reports of the heads of various institutions. I think those reports should also be tabled in the Legislature as well as being given to the commissioner, unless you find some objection. I just want to know what the flow of information is on this.

Hon. Mr. Scott: I have no objection to that. It might be an easy way to compel him to file them as part of his responsibility. There will be about 140 of those. How many institutions are there?

Mr. McCann: In the proposal that you put forward, there are 150 or 160 institutions.

Hon. Mr. Scott: With all our amendments, we will have thousands.

Mr. McCann: There would not be 150 or 160 separate reports, because some of the institutions that are parts of ministries would do their reports along with the ministry. There would be 50 or 60 separate reports. I think that would be a reasonable estimate.

Mr. Sterling: The other thing is, I would like the reporting function of the commissioner--I do not know whether his reporting function will be that difficult--I would like to see it more frequently than annually if he is rendering decisions all the time.

Hon. Mr. Scott: His decisions are not going to be rendered in a vacuum. He is going to issue a decision with reasons and it will be all over this building and 19 other buildings in about two minutes. He is going to be writing his decisions and making his decisions, and I can tell you, in short order there is going to be a weekly handbill that comes out with information about what is going on at the information agency. You know the kind of stuff every minister seems to have these days. All that is going to be out.

An annual report is a document of considerable formality. I hope we let this guy or gal do his or her work and get on with it once a year. Look at all the reports we file in there now. You do not read them. I do not read them.

Mr. Sterling: How do you know?

Hon. Mr. Scott: I know you do not read them. I file them, and the way to tell whether you read them is to file them late. I am filing stuff late all the time. No one ever complains that he does not have the report of the Criminal Injuries Compensation Board. That is an important, high-profile board.

Mr. Sterling: In this three-year period, I think it would be helpful for this committee to have a sense of where this thing is going.

Hon. Mr. Scott: An annual report. The committee is in business, it will want to call the information commissioner before it. He will provide staff who will assist the committee to do its work. Members will want to get all kinds of information from him or her. They will have to say, "Will you hire a person to see if we can collate the information this way or that way?" I anticipate that there will be maximum co-operation. It seems to me that to impose the formality of an annual report on the basis of more than once a year is just to not add usefully to the store of public information.

The Acting Chairman: There is nothing to prevent a committee of the legislature from requesting the commissioner to come before the committee at any time during that year.

Mr. Sterling: I just think that when you are dealing with information the government is giving out, it is an extremely critical political issue which politicians should be aware of: the record of any existing government at any particular time. If you have to wait for the annual report, you may be into a year and a half.

Hon. Mr. Scott: No, but you will not have to wait for anything. If you want some information, the committee has a statutory existence and the committee will simply send a message to the commissioner and say, "Be here Monday at 10 o'clock with your stenographer's notebook and pencil because we want some information." I can tell you he will come.

Mr. Sterling: Let me look at that section as well.

Hon. Mr. Scott: I wish you had asked that the Ministry of the Attorney General issue one more than once a year.

Mr. Sterling: Do you want me to?

Hon. Mr. Scott: In this year, we would not mind circulating one quarterly.

Mr. Sterling: With the information that I want?

Hon. Mr. Scott: No. With the information that I want.

Mr. Sterling: That is right.

Section 59, the amendment that gives the Attorney General--

Hon. Mr. Scott: I am sorry; what is the number?

Mr. Sterling: Section 59b; the amendment you put forward. I do not feel strongly on this but I do feel you could expand the definition of "the personal representative" to include a spouse in a defence-of-privacy situation.

Hon. Mr. Scott: The problem is that in 99 per cent of the cases, the personal representative of the deceased is going to be the widow or widower or, there being no widow or widower, a child. In responding to the information in 99 per cent of the cases, one person is going to come forward and say, "I represent the deceased," and about that there will be no practical or legal question. Everybody will say, "Fine, what is your address?" Then you will go on.

Lawyers tend to worry about the one case out of 100 where the widow will turn up with three kids, all of whom are fighting vigorously for the exclusive right to represent the will of the deceased because of some family dispute. Those things happen. They actually happen. I can give you chapter and verse. In those circumstances, the formula the law uses to resolve that problem is to say, "the personal representative," so that then if there is any dispute, the court can decide who it will be.

Mr. Sterling: I know. I guess what I am concerned about in this case is the situation where--in most cases in this province a will is not probated; there are no administrators and there are no executors of most wills--if people set up their--

Hon. Mr. Scott: I do not know about the county where you live, but that certainly is not true in the rest of Ontario.

Mr. Sterling: I would say that a good lawyer can avoid that by arranging the affairs of two people in such a manner that, where they have relatively few assets outside of their residential home, they can--

Hon. Mr. Scott: I am not saying there has to be a court-appointed personal representative. I am saying that the person who represents the deceased should be the personal representative and 99 per cent of the time that will be agreed on; it is no problem: the widow, the widower, the eldest child. It is in the case where it is not agreed on that we have to have a formula for deciding who it will be.

Mr. Sterling: You do not think the information and privacy commissioner will construe that strictly within--

Hon. Mr. Scott: No. If I were the commissioner and we had to have the deceased represented to determine whether privacy information would be available, first of all, you are probably not going to know if the person is dead, because it is going to be some citizen out there, so you send out a letter. You get a letter back saying: "He is dead. I am his widow." The widow comes in. "Do you represent...?" "Yes." Then you ask a couple of questions. "Do you have any children? Did they have any quarrels?"

Mr. Sterling: Frankly, I do not know how that will work.

Hon. Mr. Scott: It will work out fine. It is a standard kind of formulation that is used in lots of hearings.

Mr. Sterling: I do not want to force a widow to probate or administer--

Hon. Mr. Scott: She will be forced to probate only, it seems to me, if someone takes the position that she should not represent the deceased.

The Acting Chairman: Do you have any more?

Mr. Sterling: Not at this stage of the game.

The Acting Chairman: Could I suggest then to do no more at this point. There are no more amendments floating, right? What we are now ready to do is to return to the beginning of the bill and go through this one by one and think carefully about which ones you wish to push for a vote, maybe to have some brief discussion, at the end of which time if it is not important for a vote, just to withdraw the motion.

We can start now if you wish. We have half an hour left on the clock.

Mr. Martel: I have an amendment that I want to prepare and copy.

Hon. Mr. Scott: You can bring that in late.

Mr. Martel: I never trust anybody around here. I also think the chairman said we should form a subcommittee to try to determine whether some of these we are prepared to hoist or have agreement on.

Hon. Mr. Scott: I think that is what we have done.

Mr. Martel: Do you think so? I did not think so. Forgive me.

The Acting Chairman: Would you prefer not to start at number one right now but to leave it until tomorrow?

Mr. Martel: Right.

The Acting Chairman: Is that your preference? Could I suggest that if people have all sorts of wonderful ideas about amendments, they be prepared for tomorrow so that we have something in print in front of us? —

Hon. Mr. Scott: Are we going to be able to deal with the NDP amendments tomorrow, in the sense that the member who is vigorously concerned about them will not be here, I gather?

Mr. Martel: We will deal with them.

The Acting Chairman: In a very reasonable and constructive way.

If it is understood then, tomorrow morning at 10 o'clock, we start at section 1 and we are prepared for voting as we go through it point by point.

The committee adjourned at 4:03 p.m.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY
FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
TUESDAY, MARCH 31, 1987
Morning Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

O'Connor, T. P. (Oakville PC) for Mr. Turner

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Smith, D. W. (Lambton L) for Mr. Newman

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, March 31, 1987

The committee met at 10:16 a.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

The Vice-Chairman: I think we have enough members to make a quorum. Do we have enough members?

Mr. Martel: (Inaudible) if we have a vote.

The Vice-Chairman: Maybe we can talk about it, if it is all right with you, Mr. Martel. We could adjourn.

Mr. Martel: I am co-operating.

Hon. Mr. Scott: Certainly, adjourn. There are too many Tories here.

The Vice-Chairman: If the committee wishes to adjourn--

Mr. Martel: Which side are you on?

Mr. Villeneuve: The positive side.

The Vice-Chairman: If I can have everybody's attention for a moment, we can get started and then if the committee wishes to adjourn for a few moments to give more time for our colleagues to arrive, that would surely be in order.

Hon. Mr. Scott: I take it, if I may respectfully say so, that the first amendment of substance is the section 2 amendment of Mr. O'Connor, and we can certainly begin the discussion on that. Whether we want to take the vote is something else again.

The Vice-Chairman: I think we can agree to stack votes. We can do a number of things that we have agreed to do in the past. I understand that we have gone through all the amendments twice and that now it is up to the committee on how we wish to proceed, if we are going to start on clause-by-clause immediately or if there is any other suggestion committee members may have. The only other thing I wish to point out to the committee is that Mr. Sterling has prepared three new amendments. Is that correct, Mr. Sterling? You are getting them photocopied right now.

Hon. Mr. Scott: For what sections?

Mr. Sterling: Section 19 is the first.

Hon. Mr. Scott: They will not be reached in the next hour or two.

The Vice-Chairman: Anyway, I thought we should know that. Mr. Martel, do you have any comments you wish to make?

Mr. Martel: I would like a few moments to give my friends copies of each.

The Vice-Chairman: I believe it is the wish of the committee to proceed. Unless I hear otherwise, we are going to proceed with the clause-by-clause. Can I ask committee members whether they have any amendments to section 1?

Mr. Warner: Yes, hang on.

The Vice-Chairman: I believe Mr. Martel has a comment.

Mr. Martel: No, I have an amendment to section 2, but you can proceed with section 1 if somebody wants to stall.

Mr. Sterling: Mr. Chairman, can you give us five or 10 minutes? Mr. Warner has just arrived.

Mr. Warner: I have spent two and a half hours on the parkway.

Mr. Sterling: Maybe it will save time in the long run.

Mr. Martel: I have an amendment, but we are trying to decide which one of two amendments I want to put in. I am just going to ask my colleague. It is in section 2.

The Vice-Chairman: Does the committee wish to recess for five minutes?

Hon. Mr. Scott: As I indicated to the committee, we may need some time on these amendments if they are coming in late.

Mr. Martel: Can I then go and get a couple of more copies made so the Attorney General can have a look and we can decide which?

The Vice-Chairman: Okay. We will start again about 10:25 by the committee clock.

The committee recessed at 10:20 a.m.

1029

The Vice-Chairman: It is slightly past 10:25 a.m. The members have had a chance to discuss some of the concerns about section 2 brought forward by Mr. Martel and other colleagues. I think most of the members are here now. I would like to go to section 1 and ask the committee members if they have any amendments to section 1. I guess we are going to agree to stack votes. Is that what the committee wants to do? I think we should decide that now.

Mr. Martel: Unless somebody wants to divide, it would be wise just to get rid of it.

Mr. Sterling: That is the way we have been working.

The Vice-Chairman: I am just asking your advice.

Mr. Martel: I would do that and just clear them out.

1030

The Vice-Chairman: Do the committee members want to stack the ones they wish to divide on?

Mr. Sterling: Let us vote as we go.

The Vice-Chairman: We are going to vote as we go.

On section 1:

Mr. Sterling moves that the word "government" be deleted from subclause (a)(i) of section 1.

Mr. O'Connor: When we went through this, I believe the government indicated it had no problem with this.

Hon. Mr. Scott: No, we said it did not make any sense. The bill relates to government information. It does not relate to anybody else's information. I do not oppose it because it relates to the purposes of the act and to reduce the thing to deprive it of meaning will not destroy the operation of the act, but to say "information should be available to the public" is not what this bill deals with. This bill deals with government information. If you say "information," the immediate question is whose information? If you want it, by all means be my guest. The act is not going to fail on that account.

Mr. Sterling: The particular subclause talks of "government information," but the preamble to which this relates also talks about "a right of access to information under the control of institutions," and therefore it could not be talking about information other than information in the control of institutions. There was a submission made to the committee by the Ontario Institute for Studies in Education, I believe, that "government information" is not defined. Therefore, one might think it does not include information provided by third parties to the government. The whole concept of government information is unclear. That is why I moved that amendment.

Hon. Mr. Scott: Bearing in mind the steps you propose to take during the course of the day to wreck to the act, I regard this as a minor triviality and do not object to it.

Mr. Sterling: I only commented on it because the Attorney General said.

Motion agreed to.

Section 1, as amended, agreed to.

On section 2:

Mr. O'Connor: We could do the third page down in our book before we do the definition of "head" because the definition of "head," as I would

propose, would only apply if the definition of "institution," as I have suggested, passes. I would therefore like to do it first, if I may.

The Vice-Chairman: It is up to the committee, Mr. O'Connor. If it is the wish of the majority of the committee to deal with the third page in our black binder first, before we deal with the second page as described by Mr. O'Connor, I guess we can do that. I am leaving it in the hands of the committee.

Agreed to.

The Vice-Chairman: Mr. O'Connor moves clause (b) of the definition of "institution" in section 2 of the bill be struck out and the following substituted therefor:

"(b) subject to the regulations, any agency, board, commission, corporation or other body,

"(i) that is financed exclusively from the consolidated revenue fund of the province of Ontario,

"(ii) where 50 per cent or more of its issued and outstanding shares are owned by the government of Ontario or held by it through a power of appointment, or

"(iii) where a majority of the members of its board of directors or other governing body are appointed by the government of Ontario."

Mr. O'Connor: I can get into a general discussion, but if there are going to be further amendments to that definition perhaps they should be put. We can discuss them all in the general context of all the discussion. I believe Mr. Martel an amendment.

Hon. Mr. Scott: The committee is aware, of course, that this definition would include the office of every member of the Legislative Assembly so that every member's files will be subject to freedom of information and any person may ask a member of the assembly if there is any file in his office that mentions his name and demand production of it. I myself have no difficulty with that but I think that members of the assembly should be aware that this broad definition contemplates that. Therefore, members of the assembly as a body under clause (b) will be covered by freedom of information and will be obliged to meet the requirements of the act just like any other institution.

Mr. O'Connor: And well we should do.

Hon. Mr. Scott: That may well be. I am very attracted by Mr. O'Connor's proposal and look forward to seeing it be applied to caucuses, government and opposition, because perhaps we are at the stage where freedom of information should not be applied simply to government institutions but should be applied to opposition institutions as well. I think the proposal in that sense is an innovative and interesting one.

Mr. O'Connor: It should be pointed out that there is a second section or part of this bill that protects privacy in relation to personal files in my office.

Hon. Mr. Scott: But you see, the interesting use of this will be

that if, for example, the president of Exploracom believes Mr. Martel has a file that refers to him, he will be able to ask Mr. Martel to produce that file for his examination and publication. Of course, if Mr. Martel refuses, the commissioner will require Mr. Martel to produce the file. Opposition members will be governed precisely as governmental institutions are governed.

Mr. O'Connor: And why not?

Hon. Mr. Scott: "And why not?" the member says. It was an interesting, appropriate and useful question he has indeed raised.

Mr. O'Connor: I am content it was properly thought through and the freedom-of-information bill should include members of the Legislature. If it includes ministries, why not? Subject to the protections set out in the privacy sections of the bill.

Hon. Mr. Scott: I have not spoken against it and I do not think I will. I just want to be sure all members understand what is happening here.

Mr. O'Connor: Of course, you are speaking against it.

Mr. Martel: My friend has not been around very long and he does pose a problem for every member of the Legislature; that is, the sources of information you have with which you do your job as an opposition critic.

Hon. Mr. Scott: No, but sources have no application in freedom of information. You will know, when we come to law enforcement for example, that we allow information to go out even if occasionally it may destroy sources. Opposition members are going to learn to live under this regime.

Mr. Martel: I could live under it as well as anybody, but it will be difficult; you will not get information.

Hon. Mr. Scott: You sound like a policeman.

Mr. Martel: You will not get information from anyone, and as an opposition member, sometimes that is vital.

Hon. Mr. Scott: That is what the police commissions say. You do not pay attention to what they says.

Mr. Martel: No, there is a difference as to what we were arguing with respect to that. It is the way police act on occasion, like breaking into somebody's office illegally, which does not seem to bother you very much even though you are the Attorney General. I find it offensive that somebody can go in and steal the records of my party and it is okay.

Hon. Mr. Scott: So do I; I find it offensive.

Mr. Martel: I find it offensive. One of the things that Ms. Gigantes was trying to check was the stuff done by the police that is not legal. There is a big difference when one is talking about that, or just a broad brush my friend likes to use when he is commenting on what my friend from Ottawa is trying to get across. I say to my friend across the way, who is new here, that either you have the right to protect a source or you are not going to have a source.

The same applies to the fourth estate upstairs too. If they cannot

protect their sources in the media, then their stories, background and table-talking on a confidential basis will dry up. I am afraid that is what would happen to members of the Legislature, although what the government has done in the past when it found a civil servant talking to a member is it simply fired the civil servant.

1040

Our friend, Mr. Pope, of course, is a fine example. Even though Mr. MacAlpine was right and came forward as a diligent civil servant trying to protect the public interest, Mr. Pope's reaction was to fire him. I would have given him a medal for doing his duty as a forester when the good of the province had to supersede the good of someone's friend in northern Ontario. But Mr. Pope's reaction was just the opposite.

I have a concern, though, that my friend does not realize what he is doing. As an opposition member, many times you learn of things because someone is prepared to talk to you, knowing full well that you are going to retain in confidence what he or she is going to give you. If you lose that, you really lose a great deal. I ask him to think about what he is doing and to reconsider.

Mr. Chairman: Do any other members wish to make comments?

Mr. O'Connor: Just in a general way, Mr. Chairman, can I explain what I am attempting to do with this amendment and others that will follow? I am attempting to follow the basic philosophy of the act as set out in the statute itself.

The Freedom of Information and Protection of Privacy Act provides for a regime or scheme whereby, as set out in section 1, it declares that the public has a general right of access to government information, now information across the board. It then proposes a scheme of exemptions and exceptions to that general rule or philosophy of disseminating all government information. The exemptions are set out in section 12 and thereafter.

When we come to defining who is included in the act, we seem to have reversed the process or reversed that philosophy from one of everything is to be included, except that which is excluded by the statute and which can be justified by the government by having it passed by the Legislature as set out in section 12 and thereafter, to a scheme of nothing is included by way of agencies, boards and commissions unless they are specifically stated to be included in the regulation.

That is a reversal of the philosophy of the act itself. I am suggesting, therefore, that we go back to the original philosophy; that is, to create a definition of institution that will be as broad and as comprehensive as possible and that will include all those agencies, boards and commissions as set out in the definition that I have just read. If the government, in its wisdom, wishes to exclude some of them or all of them, it must choose to do so by way of regulation and, in the course of passing such legislation, justify such exclusion.

That seems to have considerably more merit than the reverse process of opting in rather than, as I have suggested, opting out. My friend wants to interrupt and ask a question. I have more to say, but go ahead.

Mr. Martel: He is trying to cover the waterfront, I understand that, but I really have a concern about us as private members, not that anything I have in my file is confidential--

Mr. O'Connor: Let me just answer that. If that is a sincere concern, then we can be exempted through regulation, and perhaps that is a proper exemption.

Mr. Martel: Okay, but let me ask my friend the other one then. The three that I think we all want in--I think there is a consensus that we would like to see municipalities in, not today, but a time limit may be written into this. I think we all want to see school boards in. I personally do, because I have watched the whole development of children's services for children who are disabled or mentally retarded, and Bill 82 was supposed to do a great deal for them.

There is more paperwork that shows programs about kids' services that are really fictional and that you really cannot get your hands on. I think they have to become responsible and answerable as to what they really have. In my area, I find it a disgrace but I cannot get the information. They hand me a piece of paper that shows a whole--

I think the three areas we really want are hospitals, school boards and municipalities. We could work those three in if we could just--I mean, that covers almost everything that my friend wants, I think.

Mr. O'Connor: It does not, with the greatest of respect. It does not then cover all the rest of the ABCs that are not now on the Attorney General's list. I would be content with a definition similar to what I have here and go on to include school boards and hospitals and municipalities, if my friend were agreeable to that. Keep in mind that simply putting them in the definition does not mean they are included. It just means that, by definition, they can be included. The onus then shifts to the government--if it does not feel they should be included--to exclude them by way of a regulation.

The important part of that is that when passing the regulation, it makes them justify to the public why they should not be included. It makes them go to the public and say, "Look, we are not going to include school boards for freedom of information because--". It makes them make their case rather than the reverse, which is now the case. They have no explanation. They have no requirement to justify to the public why something is not on the list.

Hon. Mr. Scott: I am opposed to the section and perhaps I should say why. We are perfectly prepared to have a vote of the committee about hospitals, about municipalities or about anything else as a class. We are not prepared to have this general description. It may include some boards and commissions that are not on our list, and if there are any such boards and commissions that anybody wants included, we have the regulatory power to include them and I will undertake to include them now.

I can tell you what is not included and we can go over the list and if the Royal Ontario Museum is not included and you want it included, I will be perfectly delighted to include it. I am opposed to this because its ambit is very uncertain.

We know that it will include the files of opposition members.

Mr. O'Connor: Which can be excluded by regulation.

Hon. Mr. Scott: Which can be excluded, but Mr. O'Connor says that is a good idea. I will take the sense of the motion, if passed, to be that it is the view of the committee that opposition members, for example, should be

included and, frankly, once you have passed this, I am not going to take the obligation of excluding them. How would I explain that to the public?

I think it is bad policy to say all the world is going to be in unless the government counts them out. I am prepared to add any individual board or commission that we may have overlooked, like the ROM, and if you want to come to me with your lists of boards that you think are overlooked, I will be glad to undertake, on behalf of the government, to include them. I will be glad to have precise votes on municipalities or hospitals and let the chips fall where they may on those issues.

But a broad, general thing like this that puts everybody in unless the government takes the responsibility of excluding them is going to lead to opposition members being included. I want to be clear. If the opposition by its vote decides that opposition members should be in, it is not going to be the government of Ontario that will pass a regulation to exclude them. If the Progressive Conservative opposition and the New Democratic Party opposition vote for an amendment that provides for opposition coverage under this act, it would be impertinent of me to say that their will should not be respected. That is what you get when you try to legislate this way.

So I say to the committee that we will look at municipalities with you and vote on that. We will look at hospitals with you and vote on that. We will look at any particular board or commission and put it in if you want it in. We cannot accept language of this generality.

Mr. O'Connor: The difficulty of the Attorney General's offer to look at any specific ABCs is the fact that he is admitting, by making that offer, that he has probably forgotten some. No matter how exhaustive we may be in trying to think up new and different ABCs that should be included, we are inevitably going to leave out some that should be included. It will be a never-ending process of people thinking of the odds and sods of things that should be included.

My scheme automatically includes them unless the government thinks about excluding them. With regard to future agencies that are created, they would automatically come under the auspices of the act, unless it is thought necessary to exclude them. There is that advantage that no step would have to be taken when a new board, agency or commission is created. It would automatically fall under the aegis of this act.

He keeps raising the bogeyman of opposition members. It is a tactic, obviously, to scare us off this issue. I think that can be easily handled with an exemption, either in the definition itself--

Hon. Mr. Scott: You are not going to give us help.

1050

Mr. O'Connor: We will get one, with respect, Attorney General, if the two opposition parties here choose to amend my definition specifically to exclude opposition members of the Legislature. I am not sure they are included anyway. I do not know how we are included under a definition which includes boards, commissions, corporations or other bodies.

Hon. Mr. Scott: It is Phil Gillies stuff.

Mr. O'Connor: However, by perhaps stretching the definition of body,

we might conceivably include an opposition member. He is a "body," I guess, but I am not sure that is included in any event. If we wish to exclude it, let us exclude it right here and now.

Hon. Mr. Scott: You are going to look very silly if you include everybody except opposition members.

Mr. O'Connor: My preference is to include them. I do not think we have any problem with including them.

Hon. Mr. Scott: Phil Gillies is the one we want.

Mr. Warner: Can someone explain why the Royal Ontario Museum is not on the list as an agency, board or commission?

Hon. Mr. Scott: I think I can provide the answer. As you know, under a directive there are schedules of agencies. I gather the schedules were prepared originally under some kind of consistent theory, but what we have done is to include the first two schedules of agencies. We see that there are some discrepancies. For example, for some reason the Workers' Compensation Board appears as schedule 3, so we have specifically covered it.

I can tell you the ones we have not covered and will be glad to get a sense from you about whether we should.

Mr. Warner: Okay.

Hon. Mr. Scott: We have not covered the McMichael Canadian Collection, the Ontario Educational Communications Authority--I will give you the list. I will just give you some examples, and we can deal with it at some later point. Science North is not covered. I take it that is a schedule 3 agency. Local housing authorities are not included. The Ontario Research Foundation is not included.

We would be prepared to include any or all of these, and we will take the sense of the committee after you have looked at the list and make an announcement about what we will cover in freedom of information, if we are not burdened with this kind of general amendment which sweeps everything in without any precise understanding. Mr. O'Connor's point now, at the end of the day, is that he is uncertain about whether opposition members are covered or not.

Mr. O'Connor: I am not. I said--

The Vice-Chairman: Order. Mr. Scott has the floor.

Hon. Mr. Scott: I am sorry. I thought your last line to Mr. Martel when he was giving it to you was that maybe they were not covered after all but that you were delighted to hear they are.

Mr. O'Connor: I am content that they be covered. I just do not know what this legislation covers them.

Hon. Mr. Scott: I just want to make plain--

Mr. O'Connor: You are stretching a point.

Hon. Mr. Scott: I just want to make plain where the government

stands. If the opposition parties tell us they want that kind of coverage, they are going to get it. It would not be for us to exempt Phil Gillies's files from public review. They are getting public review as he slips them in one by one. We might as well have them all out.

Mr. O'Connor: He has nothing to hide, and he has every intention of divulging them.

The Vice-Chairman: Excuse me. Mr. Warner, have you finished your comments?

Mr. Warner: Just one concluding comment: From the list you have kindly provided, there are not any institutions in here that are distinctively different from any of the ones that were listed on the schedule which is included, the ABC stuff.

Hon. Mr. Scott: Thunder Bay ski jumps.

Mr. Warner: It would seem to make sense to me that these agencies be included, and what I would appreciate put forward--it does not have to be done immediately--is a drafted amendment which would include these. To me, that would be a more appropriate way to approach it, rather than using the big--

Hon. Mr. Scott: Let me put this proposition to the committee. If the committee opts to go the section 2 route, that is one thing. If the committee does not opt to go the section 2 route, I will be glad to circularize this schedule of agencies, and if the sense of the committee is that the McMichael collection and so on should be covered, or the whole list, I am prepared to respond to that, on behalf of the government, to see that kind of coverage is subject to the regulations obtained.

Mr. Warner: I am not playing games with these things. I prefer the entire list, and I prefer this as an approach to the wide net approach Mr. O'Connor is providing. It is just a different approach.

The Vice-Chairman: I think we have had ample debate on the motion put forward by Mr. O'Connor.

Mr. O'Connor: Can I ask a question? Is it the NDP intention, then, to put forward Mr. Martel's amendment to include hospitals, municipalities, and school boards?

Mr. Martel: Not at this time. I will wait until your amendment is dealt with because I do not want to see it--I think that yours has got to be dealt with separately because yours is section 2 and mine is subsection 2(3). If I might answer my friend, we might just decide among all of us here the whole question of communities, school boards and municipalities because that is a greater net. I just want to say to my friend I think we can achieve what he wants if we put the list in.

Mr. O'Connor: The difficulty with that is that inevitably we will miss some and we will also miss those that are created in the future unless they are specifically added to the list as we go along.

Mr. Martel: But the same would apply. The government takes the same blame if it refuses to add anything. It gets a kick in the head for that too.

Mr. O'Connor: Except that a refusal or forgetting to add something

is likely to slip by a lot easier than when it does add something and has to justify it publicly. That involves the publication of a name.

The Vice-Chairman: Order. I think we can have debate but I think we have also given ample opportunity to have some cross-debate among the members. Is it the wish of the committee now that we vote?

Motion negatived.

The Vice-Chairman: We agreed a few moments ago that we would allow Mr. O'Connor to go back to clause 2(b), his amendment on the definition of "the head."

Mr. O'Connor moves that clause (b) of the definition of "head" in section 2 of the bill be struck out and the following substituted therefor: (b) in the case of any other institution, the person designated by that institution under subsection 3(2) as its head.

Mr. O'Connor: I think you would have to read that in connection with subsection 3(2) obviously.

Hon. Mr. Scott: Can I ask if you need that in light of the fact that the first amendment has been defeated?

Mr. Sterling: Does not the existing bill put all of the control in the hands of the minister, period, regardless of the institution under which he comes?

The Vice-Chairman: Excuse me. Before we carry on the debate I think Mr. O'Connor should move the motion so we can do this properly.

Mr. O'Connor: We do not need this one. We do need to deal with subsection 3(2) when we get to it because there is a difficulty, I think, in our definition of "head" as it exists. The difficulty, if I can get into it now because it does relate to my definition and we are at that point, is that our definition of "head" includes clause (a), which is fine, and (b) in the case of any other institution, the person designated as head in that institution in the regulations. Therefore it is open for no one to be designated by the lack of a passage of a regulation.

Hon. Mr. Scott: We fix that up later.

Mr. O'Connor: How do we do that?

Hon. Mr. Scott: The issue is whether we need this here. I take it we do not.

Mr. O'Connor: I do not think we need (b) there if we pass my amendment to section 3, which would be a new subsection (2), which requires that, "Every institution that is not a ministry of the government of Ontario shall designate a person to be the head of that institution for the purposes of this act." The new subsection 3(2) would require rather than just allow the designating of a person as the head by regulation.

The Vice-Chairman: I think in order to conduct the committee's business properly and to have a debate on a proposed amendment, with all respect to the committee, the amendment has to be moved. We are having a debate now on an amendment that has not been moved. Either we are going to

move the amendment and have a proper debate or we are not.

Mr. O'Connor: I would like therefore to substitute the amendment that I have and withdraw it and put another amendment if I may.

The Vice-Chairman: You are then withdrawing?

Hon. Mr. Scott: We will need some time to consider it.

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Mr. O'Connor: All it does is to delete clause (b) of subsection 2(1).

Hon. Mr. Scott: Perhaps, Mr. Chairman, we should have a debate to get the sense of the issue, because I think behind this amendment there is an issue about which the committee may divide. If we divide in Mr. O'Connor's favour, then we deal with the amendment. If we divide against him, we do not need an amendment.

The issue, very simply, is in the case of a ministry, the act says that the minister will be the head. The intent of that is to ensure that the highest authority in the ministry will be responsible for the freedom-of-information act. There is going to be no buck-passing by saying the head, for the purposes of the act, is not the minister but the head of the communications section.

We have said in the act that when you come to a ministry, it is going to be the minister. With respect to all these agencies, boards and commissions running down to the Thunder Bay jumps, or whatever it is, the issue is going to be, are you going to let the agency itself designate its head for the purposes of freedom of information, which is Mr. O'Connor's proposal, or are you going to require the cabinet to designate its head?

We cannot do it in the act because there are just too many agencies to pick out, so we have to develop a system. I favour having the cabinet do it because I want to impose this obligation on the most senior person in the agency, board or commission. I want Dr. Elgie to be the head for the purposes of the Workers' Compensation Board. I do not want the WCB to be able to decide it is establishing a personnel intercommunications division on the fifth floor and the chairman of that will be the head for freedom of information.

Mr. Warner: You could do that.

Hon. Mr. Scott: We could do that. Bearing in mind that we ourselves have it at the highest level, are we as likely to do it as an agency is likely to do it if the agency does not give a high profile to freedom of information?

Mr. Martel: Would the minister then, for the particular agency, have to answer in the House for it? That is the question. That is what you want, that some minister cannot get off the hook.

Hon. Mr. Scott: For freedom of information, you see, there is not that answering responsibility of the normal type. If the head of the WCB, whoever the head is for freedom of information, refuses the release of a document, then there is an appeal, but the Minister of Labour does not answer for that because the statute imposes the obligation on the head.

What I want, as a cabinet minister, is to see to it that the most senior

chap around is designated. I do not want a board or commission with the power to select who will be its own head for freedom of information. If they do not take freedom of information seriously, they are going to pick someone way down the line.

Mr. O'Connor: The problem with the definition as it exists, though, is that it is open to appoint no one in the case of an agency, board or commission because clause (b) says "in the case of any other institution," other than a ministry, "the person designated as head of that institution in the regulations." It is open to pass no regulation in respect of whoever the head of that institution is for purposes of freedom of information.

Hon. Mr. Scott: We are prepared to look at filling in that gap, if there is such a gap. I do not believe there is. But that is not the intent of this regulation.

Mr. O'Connor: No, all right.

Hon. Mr. Scott: Let me put it this way. I think there are some boards out there who are not going to be all that keen on freedom of information.

I do not think the Workers' Compensation Board is going to be one of them, but let us pick it as an example because we are all familiar with it from our constituency practice. I do not want the freedom of information head in the WCB to be some new employee or the chairman of the public relations committee, on the 15th floor of the building. I want it to be the most senior person in the ministry.

Mr. O'Connor : Say that there, then.

Hon. Mr. Scott: You cannot deal with all the agencies by saying "most senior person." It does not mean anything.

Mr. O'Connor: No, but you can have it

Hon. Mr. Scott: I want it to be Dr. Elgie, and the cabinet will see to it that it is Dr. Elgie. If the cabinet does not see to it, that is where Mr. Martel's cabinet responsibility comes in.

If the Minister of Labour in the cabinet designates some junior official as the head of the WCB for freedom-of-information purposes, then the opposition guy gets up and asks the Minister of Labour in charge of the you-know-what, "Why did you designate such a junior person?" He is squarely on the hook. This way, you allow the agency itself to decide who is going to run freedom of information, and I think that is a very counterproductive exercise.

Mr. O'Connor: How do we repair the definition to make sure you do appoint somebody? It is now open under that definition to appoint nobody. Therefore, there would not be anybody you could go to for purposes of freedom of information.

Hon. Mr. Scott: We are perfectly prepared to add a section, which we will draft, saying that if no head is designated, the minister responsible will be deemed to be the head. We will draft up language. If you could deal with this on our undertaking to produce such an amendment--

Mr. O'Connor: Fine, done. I will withdraw my amendment to clause (b)

and my amendment to subsection 3(2), when we come to it. See how easy I am to get along with, Mr. Scott?

The Vice-Chairman: Moving right along, are there any other amendments to section 2?

Mr. Martel: I move that section 2 of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

"(3) Subject to the regulations,

"(a) Every hospital listed in the schedule to regulation 863 of Revised Regulations of Ontario, 1980, made under the Public Hospitals Act."

Mr. Morin: Which one is that?

Mr. Martel: It is a new subsection 2(3). Do you not have copies?

The Vice-Chairman: Excuse me, Mr. Martel, could you just hang on a second? We are having trouble locating your motion. Just give us a moment. You make me work.

Mr. Martel: Do you want to deal with the other two first?

The Vice-Chairman: No. I think we will be okay. We just needed a moment.

Mr. Martel: I will continue:

"(b) every private hospital operated under the authority of a licence issued under the Private Hospitals Act;

"(c) every hospital established or approved by the Lieutenant Governor in Council as a community psychiatric hospital under the Community Psychiatric Hospitals Act; and

"(d) every sanitarium licensed by the Lieutenant Governor in Council under the Private Sanitaria Act,

"shall be deemed to be an institution for the purposes of this act."

I want to indicate now that at the appropriate opportunity, when we get to section 56, I will move yet another amendment that will make it compulsory for the government to establish regulations. If it chooses not to, then it falls on its own head.

It is pretty simple, as I understand the thing now. Let me give you an interesting scenario. If you happen to be in a psychiatric wing in a hospital in Toronto right now, you can get your information. If you are in another part of the hospital, you are excluded. It is a little silly not to be able to, and the government is moving to make freedom of information available with Bill 176, to make it necessary for nursing homes to come up with this.

We have all had problems in our constituencies over the years where someone is not happy with the treatment he has received at a hospital. He wants to get access to his own file but he is excluded. We will deal with what regulations the government comes up with in a later section but, at this

stage, I just do not think that hospitals should be able to hide behind a veil of secrecy. Like everyone else, they have to be answerable to the requests of people who go through their doors.

I ask my friends to consider supporting this, because I think it is an important move to loosen it up. I understand that Quebec and the hospitals that come under federal authority, such as veterans' hospitals, are covered.

Hon. Mr. Scott: I suspect there are not any except--

Mr. Martel: Maybe part of Sunnybrook or something.

Hon. Mr. Scott: --hospitals in the military system.

Mr. Martel: Yes, in the military system. Quebec has it, I believe. They have had a fair deluge of requests for information, so I do not see why we should exclude it.

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The Vice-Chairman: Thank you, Mr. Martel. Any comments on Mr. Martel's motion, on subsection 2(3)?

Mr. Sterling: There may be some confusion.

Mr. Martel: I read it. It cannot be confusing.

Mr. Sterling: Where do the hospitals that are totally run by the province stand under this legislation? Are they included?

Mr. McCann: Yes. I believe there are 10 psychiatric hospitals that are directly operated by the Ministry of Health. For the purposes of this, they are part of the ministry and they would be covered by virtue of the fact that the bill covers ministries. There are also psychiatric facilities, psychiatric divisions in public hospitals, which are not covered because they are not part of the Ministry of Health. The ones that are directly owned, operated and staffed by the ministry would be covered in any event.

Mr. Sterling: I have mixed feelings on this amendment.

Mr. McCann: To finish that thought, the recent amendments to the Mental Health Act that are contained in Bill 7 would apply to psychiatric records across the board, whether in the provincial psychiatric hospitals or in the psychiatric facilities in public hospitals.

Mr. Sterling: The argument against an amendment like this is that this bill is not designed to deal with patient-doctor records or medical information. Horace Krever has done a whole study on this matter, and it was always my thought that after freedom of information and privacy were brought forward, the next step for a government to deal with would be the medical end of the problem. It reflects something I talked about before in terms of dealing with the confidentiality provisions of the other pieces of legislation.

Hon. Mr. Scott: I misunderstood. I thought the Conservatives were in favour of adding hospitals to the bill. Certainly that was the sense only 10 minutes ago.

Mr. O'Connor: I am.

Hon. Mr. Scott: Mr. O'Connor is. There is a division here.

Mr. Sterling: I believe you talked to one of our party. Sometimes in our party there is room for a difference of opinion. At any rate, Attorney General, if you want to--

Hon. Mr. Scott: I raised the question because I took it 10 minutes ago that it was the sense of the committee that hospitals would be included. I myself am not very bullish on it, to be frank, but I thought it was the sense of the committee that the opposition favoured the inclusion of hospitals.

Mr. Sterling: Can I ask a question? How do you differentiate? If you are against such an amendment, how do you differentiate between what happens in psychiatric hospitals and what happens in public hospitals?

Hon. Mr. Scott: I think that point is very well taken. I also think your point that the act is not responsive to the needs of hospitals is a significant point. Frankly, even with the amendment, that would be a powerful motivation for a government to exempt them until you can get a scheme that deals with the patient-doctor relationship in a hospital context that is somewhat different from the kind of scheme we have here.

That point is a sound one. How it will be dealt with in the hospitals that are covered by virtue of being part of the ministry, I cannot say at the moment, except that it was recognized that there would be no justification for excluding those hospitals.

Mr. Morin: Mr. Scott, for my own clarification, does it mean, for instance, that if I wanted to obtain some medical information about an individual, with this I would have access to it?

Hon. Mr. Scott: If hospitals were covered, you would have the right to make an application to the hospital. If it was about your own information, you would be able to obtain it. You might be able to obtain other information the hospital has if it was not protected by the privacy rules that affected somebody else. In other words, I do not believe you would be able to get somebody else's medical information, but you would be able to get other information the hospital had. If the hospital was doing a planning study on the development of a new wing, you would be able to apply to get that.

The difficulty I have with the inclusion of hospitals is twofold. One is the point Mr. Sterling made, that the act is not really responsive to the problems of hospitals. Against that, and I have no immediate answer to it, is, "Look, by definition, psychiatric hospitals are covered, so why not go the whole hog?"

The other difficulty is a difficulty of principle; that is to say, it seems to me the intent of this bill is to cover governments. Mr. Martel will be heard on this, but the role of a hospital lies somewhere between a purely private role and a purely governmental role. Hospitals are run by independently elected boards in their communities, or theoretically are.

Mr. Martel: So are nursing homes. Nursing homes are private. Come on.

Hon. Mr. Scott: All their funds do not come from government. I think it would have been the intent of the report on which this is based to exclude a nongovernmental institution, which I think a hospital is, but the sense of the committee, I take it, if the Conservatives unite behind Mr. O'Connor, is that hospitals should be included.

Mr. Morin: Let us speculate that the Ombudsman, who has no jurisdiction over hospitals, would like to obtain information that normally he could not have access to. All he would have to do is to go to that body and obtain that information. Am I correct?

Hon. Mr. Scott: Yes. It is also worth pointing out--we have not come to it, and this deals with Mr. Sterling's point--that under section 59a, while psychiatric and mental hospitals are included, the act does not apply to records in respect of psychiatric facilities. While they are included, being part of the ministry, they are carved out by section 59a. Mr. Martel may want to take a shot at that when the time comes.

Mr. Martel: But you also have it under Bill 7.

Mr. Morin: Does that not defeat the purpose of the Ombudsman's office?

Mr. Warner: You cannot obtain information now.

Hon. Mr. Scott: I cannot judge whether it defeats the purpose of the office. It seems to me the question to be decided on this amendment is, do you believe that a freedom-of-information scheme that is primarily designed for governmental institutions, whether it be the Ministry of the Attorney General or the Royal Ontario Museum--

Mr. Martel: Why do you not include for my friend that you are covering nursing homes under another act? By and large, half of them at least are private, and you are covering them.

Hon. Mr. Scott: Because I knew you would say that.

Mr. Martel: I know but--

The Vice-Chairman: Mr. Morin has the floor.

Mr. Morin: What complications do you see in this amendment?

Hon. Mr. Scott: One of the difficulties is about doctors. I have no right to impose my will on the committee, and I do not, but you have a problem with doctors. If doctors came before the committee, they would say, "Look, if you are going to make the records we prepare available to the patients about whom we prepare them, that is going to be fine in some cases, but that is not going to be fine in all cases. Those records are not prepared for the use of the patient, they are prepared for the use of the staff, and we expect to speak with a certain degree of frankness."

In Bill 7, as Mr. Martel will point out, we had that full debate. I think it is really a question of impression. Do you think that this act is suitable, in the way it is drafted, for extension to an institution which I regard as a nongovernmental institution, a hospital, whether it be the Kemptville District Hospital or the Hospital for Sick Children? Or do you, Mr. Martel, think that hospitals are so fundamental and so closely connected to government in funding terms that they are just an extension of government?

The government has a regulatory power, but it seems to me that is the issue for the committee. How do they view hospitals? You will be coming later to the question of how you view municipalities, because I take it there will

be an amendment to extend this to municipal governments and I am anxious to have the view of the committee.

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Mr. Martel: May I get my friend's attention across the way so I can put a couple of points? If he looks at section 56 clause I intend to move, it will provide the ability to make regulations with respect to how this act will work. I do not want to leave it up in the air. That provision will make it incumbent. I do not want to speak to that section, but I think it is imperative that the committee know we are making provisions that the act will have the section that allows the government to make regulations to cover hospitals.

Hon. Mr. Scott: I accept that as a fair statement. I think Mr. Martel is right to draw everybody's attention to that.

Mr. Martel: Let me speak to the hospital thing itself. If one looks at a piece of legislation that is before the Legislature now, Bill 176, the Nursing Homes Amendment Act--you heard all the arguments in the House--they are not public; some are, but the overwhelming majority are in the private sector, are private industry. Because we have put in funding, the government is moving an amendment under Bill 176 where you will be able to get access to that information. It did the same under Bill 7. My friend left out a little bit with--

Hon. Mr. Scott: Not much.

Mr. Martel: He left out enough in Bill 7, but under Bill 7 you are going to be able to get the information. It is odd that if you are a psychiatric patient in a hospital, you can get information with respect to your file. If you happen to be in some other portion of the hospital, you are denied the same information. It does not make much sense.

My friend talked about Krever. My understanding is that Williams did not comment on this section in his report simply because he felt that what Krever did was going to be applied. Somewhere in his report, I think Williams indicated rather specifically that he was leaving it to what the government was going to do with Krever.

Hon. Mr. Scott: He excludes hospitals.

Mr. Martel: Who?

Hon. Mr. Scott: Dr. Williams.

Mr. Martel: Did he not think Krever--

Hon. Mr. Scott: No, he did not. I think it is worth reading. Dr. Williams put the point exactly as I did. To be fair to him, I put it exactly as he did. Here is what he said. He is referring to the definition: "Although this definition excludes some organizations which receive extensive public financing, such as hospitals and universities, we feel that it is none the less appropriate to so restrict the scope of the proposed legislation. Neither hospitals nor universities are commonly thought of as institutions of government."

What he was saying was: "We are drafting legislation that is going to

deal with government and its institutions. Hospitals are big, important agencies, but we do not think of them, with their private boards, as government institutions." That is the first point. Second, the question is, does the committee think that, much to its surprise, freedom of information should suddenly be left holus-bolus on the Kemptville District Hospital or our community hospital, which does not even know we are sitting here?

Third, reference is made to nursing homes and psychiatric hospitals under Bill 7. The point there is that the nursing home thing and the Bill 7 thing were designed to prepare a finely-tuned scheme that would allow patients greater access to their records, finely-tuned with relation to what was appropriate so patients could get into their records.

Of course, freedom of information is something that extends well beyond patients. This extends to anybody on the street who wants a question answered.

Mr. Warner: Patient records? Come on.

Mr. Martel: Come on. You are making the most perverse arguments I have ever heard; almost obscene.

Hon. Mr. Scott: I thought they were all right.

Mr. Martel: I know. You have included Bill 7.

Hon. Mr. Scott: The Conservatives are going to pass it.

Mr. Martel: I know, but you included Bill 7. I would sooner have animosity than a split vote because I think this is important. You are freeing information with respect to nursing homes. You now have alluded to hospitals not being considered part of government. What do you consider a nursing home? You cannot have it both ways and you want it both ways.

Hon. Mr. Scott: If the Salvation Army Grace Hospital in my riding comes me up tonight and says, "You dumped this freedom-of-information thing on us and we do not know what we are doing," I want to be able to say who did

Mr. Martel: You can tell them it is me.

Hon. Mr. Scott: You can take the credit.

Mr. Martel: I can take credit for it.

Hon. Mr. Scott: You can and I intend to offer you the credit. I intend to name you and I going to include Mr. O'Connor.

Mr. Martel: Name me any way you want, but let us go back to the argument. You have tried to convince your colleagues across the way that hospitals are not an adjunct of government, but you do not respond when I ask, "What about nursing homes?" You say that is to meet a certain situation. Then we talk about the psychiatric institutions. Some are run directly by government; others are not. If you were a patient at the Sudbury General Hospital, which has a psychiatric component to it, you could have access to your file. If you happened to be in the rest of the hospital, you would be told "no." That is a reality. You know it and I know it.

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Hon. Mr. Scott: I will not characterize your submission the way you

characterized mine, but the committee might imagine how I would if I were up to that. With respect to nursing homes and psychiatric hospitals, we have said in the Nursing Homes Amendment Act and in Bill 7 that there is a need for patients to get greater access to their files.

Mr. Martel: In the rest of the hospital too.

Hon. Mr. Scott: Yes. We have finely tuned a scheme so that patients can see their records. I am in favour of that and I support it. I think it is a good idea. We did it in Bill 7.

Now this, of course, is not a finely-tuned exercise.

Mr. Martel: Whoops, you are leaving out a part. The section clause gives you the authority to do all the fine-tuning you want. You are being selective.

Hon. Mr. Scott: How do you spell your last name so I can tell Salvation Army Grace Hospital?

Mr. Martel: You are really selective on what you put forward. When it is convenient, you ignore what is before you.

Hon. Mr. Scott: If I leave anything out, it is by accident.

Mr. Martel: Yes, I know it is by accident.

Hon. Mr. Scott: Secure in the knowledge that you will fill the gap.

Mr. Martel: God help me.

Mr. Warner: I am not sure why the Attorney General chooses to attack the Salvation Army but I can assure him the Salvation Army runs a first-rate hospital in my area.

Hon. Mr. Scott: They are going to be rattling your cage tomorrow.

Mr. Warner: I would be most pleased to co-operate. In fact, as the Attorney General knows, like almost every hospital in this province, it is a public institution. The public is freely admitted to the hospital. They are not private institutions. In this day and age, the term "government institution" is a very artificial kind of definition. Institutions such as hospitals do not function without public money; they simply cannot function. Universities do not function without public money. The definition of "government institution" is an old one, and it is an artificial one.

Hon. Mr. Scott: If you do not pass this amendment, you are going to be in serious trouble when Ms. Gigantes come back. She has her heart set on this.

Mr. Warner: Which amendment?

The Vice-Chairman: David, are you finished?

Mr. Warner: No. It seems to me there is a very basic issue here that I am really surprised my friend across the way does not recognize, especially with his background of working with the Office of the Ombudsman. Surely to

ness, the opportunity for an individual to receive his or her patient information is--

Mr. Morin: That is not what concerns me. It is what is being done with that information that concerns me.

Mr. Martel: Only personal people can get it.

Mr. Warner: What you want to do with your information after you have obtained it is your business, but I would have thought you would like the opportunity to receive your personal medical information from when you are in the hospital. Apparently, you are saying you do not want that opportunity, nor would anyone else have that opportunity. Frankly, I do not understand that. This is a very reactionary approach, in my books, stirred up by Mr. Sterling. It could appear at this point that the amendment is going to fail. I am saddened by that because I thought it would be the unanimous opinion of the committee, based on our experience with amendments to the Nursing Homes Act, based on our experiences through the debate on Bill 7, that this was the appropriate opportunity to allow the people of Ontario access to their medical records when they so choose to have it. Now you have decided it is not appropriate.

Mr. O'Connor: In the interests of making as comprehensive a freedom-of-information act as we possibly can, we should include a section that, as far as I can see, simply allows a medical patient to have access to his own records. It is not that anyone else will have access to his records. Privacy sections of the bill protect against that.

As an example, the Attorney General raised the issue that people would therefore have access to the plans that are being formulated for the addition of a new wing to a hospital. So what? Why not? It is public funds, either collected in a community and donated by people voluntarily, or tax funds that are building the new wing on the hospital. Why should the public not have access to the plans as they are being developed? I cannot conceive of why there would not be a reason for that. If that is the great fear he throws out against us as to why this section is bad, I have a little difficulty understanding his rationale.

From personal experience as a litigation lawyer involved in a few malpractice suits and other instances where I have attempted to obtain patient records from a hospital or doctor and gone through the difficulty, notwithstanding having the rules of practice and procedure in the court system assist me, I can tell you this kind of amendment is necessary to assist the average person in getting his own medical records. To the extent that is all it does, and that is all it does with section 56 as a protection against anything further than that, I think it should be passed.

Mr. Villeneuve: We have gone ahead and looked at the lawyer-client relationship as something special and I believe the doctor-patient relationship is and should be in the same vein. I have had a couple of experiences or situations. For instance, a milk truck driver had to report on his application for a driver's licence the fact that four years or three years previously he had a heart bypass. He had been driving the truck for three years when all of a sudden this came to the fore. He almost lost his job. I had to intervene and he is still driving. The availability of this kind of

stuff, I believe, should be the doctor's prerogative and the patient's prerogative.

I guess there are safeguards so that it would not be available to the public, but for Bill 7, I was not that much in favour of that amendment and I voted against it. I see myself in the same situation, having to vote against this amendment.

Mr. Sterling: One of the problems I have with this amendment and the other amendments we are considering in terms of extending the scope of the bill, but particularly with this amendment, is that there has been significant debate in the past leading to the Krever report in 1980. Since that time there has been little debate on the whole matter of patient-doctor records, confidentiality, etc.

I think it would be unfair for us to consider this amendment without first allowing the participants in that debate to have their say. We are dramatically changing the scope of the legislation by including in it public hospitals with regard to medical information. I would have great sympathy with an amendment that would include the financial or management end of public hospitals, but I have some difficulty in dealing with the issue of a patient-doctor relationship without having heard the other side of the story.

We heard from the Ontario Hospital Association. We did not hear from the Ontario Medical Association. We did not hear from the Canadian Medical Association. They did not think this bill dealt with their particular confidentiality issue.

I have a great deal of empathy with the position many members of this committee have taken with regard to the right of access to a patient's record. I probably would side with them on that particular issue but we have not allowed the other side to have its say. With regard to the amendments to Bill 7, one of the major reasons for many of my colleagues voting against Bill 7 was the fact that people did not have a say on an amendment that came into that process when it was along the way.

Mr. Martel: You know why you voted against Bill 7.

Mr. Sterling: I have a great deal of difficulty in supporting the amendment, as it is placed, at this time. I hope somebody gets on with the Krever commission. I do not know whether this is a way to force it.

Hon. Mr. Scott: Perhaps I can ease the way for all committee members by saying this as a member of the government: If the section passes, and I anticipate it will although there may be a division, I intend to recommend to my colleagues that hospitals be exempted from it until either the Public Hospitals Act can take care of it or the act is modified in general terms to take care of hospitals. If it passes, we have that regulatory power.

The sense of the amendment is that hospitals should be covered. My concern is whether this act has mechanisms that are suitable for hospitals. I want to be very frank with the committee in saying that if it passes, it would be my recommendation to cabinet--they do not always get anywhere--that hospitals be exempted under the regulations until the act is reviewed, presumably by this committee if not others, to make sure that the act as a whole is suitable for application to hospitals.

Mr. O'Connor: What regulations are exempt (inaudible)?

Hon. Mr. Scott: That is one but the amendment also opens with "subject to the regulations." It does not appear on the typed copy but it did. The sense of Mr. Martel's amendment is clear.

Mr. Martel: If the Attorney General thinks down the line they can accept it as they are doing with Bill 176, that is fine. I find the comments of my friend the member for Carleton-Grenville (Mr. Sterling) almost perverse when he says he does not want to open it up to include hospitals, yet two minutes ago he wanted to open it up and was prepared to vote for every amendment in the universe. Do not hand me the gears. Go back and look at what you were going to vote for on section 2. You cannot have it both ways.

Mr. Sterling: That did not cover hospitals.

Mr. Martel: That covered everything under the sun, and you come here and say you were prepared to vote for this one, which covered everything, you have the audacity to sit there and say just hospitals becomes too large? Come on. You might fool around with some rookie on the street, my friend, but do not come here and hand me the gears because you are playing a straight game. You know it and I know it. What the hell are you handing me?

Hon. Mr. Scott: Would my friend accept the proposition--and we will accept the language worked out--that there should be a modification to this, that this section would not come into effect until regulations under section 56 had been passed? It seems to me that is the sense of what he proposes.

Mr. Martel: If we are saying in the second section I propose to move.

Hon. Mr. Scott: There is that little technical gap. If you could do that, then if it passes, we can be certain that before it is effected--

Mr. Martel: The regulations governing it.

Hon. Mr. Scott: --there is a regulatory scheme with which hospitals, doctors, patients, members of the Legislature and, God knows, staff of the ministry can live with.

Interjections.

Hon. Mr. Scott: You have closed down the ministry with all the statement you have caused. They have all come over here.

Mr. Martel: I was just wondering. It grows here by the moment.

Hon. Mr. Scott: Wait till you mention municipalities. We will close another one.

Mr. Martel: Before the day is over. Can I have a moment to confer with my colleague here?

Interjections.

Mr. Warner: The choice is rather an interesting one. If we choose to take the government's generous offer, then it can simply choose not to claim this particular section of the act. If we choose to accept its offer, it can choose not to ever introduce the regulations.

Mr. Martel: Maybe we could ask the Attorney General.

Mr. Warner: In any event, the government has the upper hand.

Mr. Martel: Let me ask for clarification. If we change this a little, is my friend undertaking to ensure that it goes to the Minister of Health (Mr. Elston)--because it involves him, naturally--to undertake the beginning of the process of establishing it?

Hon. Mr. Scott: We will back up even further. If you want to forget about hospitals, I understand I am authorized to say that the Minister of Health will develop a freedom-of-information scheme under the Public Hospitals Act. If you are prepared to take that undertaking, and I understand I have authority to make that offer, then the issue disappears altogether. If you are not prepared to do that, we would prefer the regulatory scheme to be conditional upon the application of it to the hospitals.

Mr. O'Connor: Why not get the program under way today by passing it in the fashion we are suggesting, with the regulations, which need not be proclaimed until a scheme is worked out between the Attorney General--

Hon. Mr. Scott: I do not need your used car right now.

Mr. O'Connor: --and the Minister of Health, rather than taking somebody's undertaking that something might happen in the distant future. We can ensure that it will happen by passing this section today, along with subsection 56. I agree they have to go hand in hand before the thing can be--

Hon. Mr. Scott: The proposal that the New Democratic Party has is a creative, practical and sensible proposal and the sense of it is--

Mr. O'Connor: And they do not want me to upset it by ensuring it happens.

Hon. Mr. Scott: No. Frankly, I do not want anyone mucking around for some political purpose. We are making a deal in the public interest here.

Mr. O'Connor: You are imputing motives and that is unfair. I am trying to develop a better act than you are proposing, and I see this as a way to do it.

The Vice-Chairman: I would say to the committee members that we have had a lot of debate on Mr. Martel's amendment to subsection 2(3). Is it the wish of the committee members that we place the motion at this time? I see a lot of heads nodding in the affirmative. I guess Mr. Martel does not agree.

Mr. Martel: Could I ask the Attorney General if I can stand this down for a moment? I would like to discuss it a little more over the lunch hour. I think I am prepared to buy that it go under the Public Hospitals Act, but I have to check with a couple of my colleagues.

Hon. Mr. Scott: We have no objection to standing it down.

Mr. Martel: So that we can get the understanding that it is not going to--I agree with the Attorney General. I trust the Attorney General when he tells me that he is prepared to go and--

Interjections.

Mr. Martel: He is a man of his word.

Mr. O'Connor: That is going to end up in his election brochure.

Mr. Martel: No, it is not meant for that. When he says that he is going to send it there and that the Minister of Health is prepared to accept I would like to see some indication of that. Nobody is trying to play any games here.

Hon. Mr. Scott: No.

Mr. Martel: If there is any way you can indicate to me that--

Hon. Mr. Scott: Why do we not stand it down now? We have no objection.

The Vice-Chairman: Mr. Martel, are you standing down your motion?

Mr. Martel: Yes, I will come back to it.

The Vice-Chairman: That is fine. The motion has been stood down.

I want to point out to the committee so that we can deal in a fairly organized way that a few minutes ago, there was a little bit of confusion as to where Mr. Martel's motion was in the black book. That occurred because we proposed a number of amendments that are in our books. What I want to ask the committee to do is, whether you are going to stand down any of the motions you had in your black book or whether you want to remove them altogether, I think it is very important that we deal with them on a case-by-case basis so we are not jumping all over our book without any order whatsoever.

The first thing I would like to do is go back to subsection 2(1), which was proposed by Ms. Gigantes. I understand the NDP--Mr. Warner, do you want to withdraw that?

Mr. Warner: No, I have a minor amendment to that.

Hon. Mr. Scott: Is this the law enforcement one?

The Vice-Chairman: No, we have gone back to the "institution" amendment. We are on page 4 in the black book. There is a proposed motion by Ms. Gigantes, and Mr. Warner has the floor.

Mr. Warner: I thought there was at least some sense in the committee when we discussed this earlier that at some point the municipalities should be included under the freedom-of-information act. The problem was that this proposal by Ms. Gigantes made it immediate, or at least that was the one thing of it. That was not the intent. The intent was that it should come in at some point.

I am going to suggest that we take the motion as printed and add to it, "to take effect three years following the proclamation of the act," so that there is a three-year time period within which municipalities have the opportunity to develop their freedom of information.

Hon. Mr. Scott: Mr. Chairman, I must tell you that the government is opposed to that amendment with or without the rider. We believe that freedom of information should be developed in due course, the quicker the better in

municipalities. We believe that freedom of information, as a principle, should extend to municipalities and indeed, much information that people want is in the hands of municipalities. Of course, municipalities run all the way from very large ones, such as Metropolitan Toronto, to very small ones, such as the township of Erin, where I live.

Mr. O'Connor: You pronounced it right.

Hon. Mr. Scott: I pronounced it as one who lives there pronounces it.

The Vice-Chairman: Mr. Warner, if we are going to proceed, I believe you have to put your motion.

Mr. Warner: I seek the advice here of counsel, because I note that Ms. Gigantes took the time allocation, which she chose as being two years--now I am suggesting three--and placed it under a separate subsection 2(3). She took the idea of including the municipalities and broke it into two parts: one, the principle and, two, the time. I do not understand why it cannot be included in one amendment instead of two.

If you are seeking frantically for the second one, it is subsection 2(3) where she has put: "(3) Clause (aa) in the definition of 'institution' in subsection (1) shall not have effect until two years after this section comes into force."

I do not know if it is proper or not. That is why I am asking the advice of the chair or counsel as to whether I can take that and add it to this subsection 2(1) definition of "institution" and just say, "to take effect three years following the proclamation of the act."

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Ms. Baldwin: If I can respond to that for a moment, I think in the drafting matter it would be preferable to have a separate subsection that deals with when it comes into force. In terms of the meaning, it would make no difference. Perhaps the committee could consider in principle the two motions together and vote on the one and follow with the other.

Mr. Warner: The committee is clear as to what my intent is. It is that the municipalities be included and that they would have three years within which to make the necessary arrangements to be part of the freedom of information.

The Vice-Chairman: Mr. Warner moves that the definition of "institution" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "and" at the end of clause (a) and by adding thereto the following clause:

"(as) the corporation of every municipality in Ontario, every local board as defined by the Municipal Affairs Act and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario."

Is there any debate on this amendment?

Hon. Mr. Scott: I would like to speak to some points. As I was saying, we are opposed to the amendment in its present form. We believe

freedom of information must come to municipalities, and it is appropriate that it should. What this does is simply say it will apply to them; this is the act that will apply and it will apply in either two or three years. We think it is desirable, and I think this was the sense of something the chairman said at that day, that the committee should serve notice on the municipalities, in effect, that freedom of information is coming to municipalities.

Bearing in mind the variety of municipalities, I do not think it follows that every one of them should adopt precisely the same scheme. We should be writing to municipalities: "If you do not enact freedom-of-information bylaws that meet an adequate standard in your own municipality within the next two years, then you have to face the fact that the province is going to step in. The province does not want to get into your affairs, but the sense of the public is that we need freedom of information, and we will be returning to this question in two or three years."

I ask the committee to consider rejecting this, which says it will apply *ex-bolus* to municipalities, and if you want to, at the end of the bill, adding on a resolution that says the committee that is empowered to look at the act three years hence will be specifically invited to look at whether municipalities should be included.

If by that time municipalities, or some of them, have done the job on their own, then they will not have to be included. In other words, let us get municipalities close to the ground, representative of their constituents, and do the work themselves in a proper way.

Mr. Warner: This is not the first time this subject matter has been brought up.

Hon. Mr. Scott: I am just following the chairman's suggestion.

Mr. Warner: The chairman, of course, always fulfils his role as chairman in an excellent way.

The Vice-Chairman: I think we should clarify which chairman we are talking of. It is the old chairman.

Mr. Breaugh: The real chairman.

The Vice-Chairman: The chairman who is being paid to be chairman.

Mr. Warner: The one who shows up occasionally.

This is not a surprise to municipalities. The inclusion of municipalities in freedom of information is something of which I am sure they have been aware for some time. To delay it further, which you are suggesting, to add some kind of addendum at the end of the bill saying "When we review this thing, we want you to know that we might be thinking about you"--

Hon. Mr. Scott: This act is not suitable for the municipalities. It is going to be a centralized, government agency with the commissioner in Toronto and a manual printed by the government.

What you are saying is that every municipality, including a regional municipality, has to come down here to some commissioner to deal with some document under an inspection file to determine if it is going to be released. If you thought there was trouble with regional government, when you guys have

this scheme in effect, the municipalities will be coming down here all the time.

Who moved this? I want to get his name down so I can--

Mr. Warner: Send it to the Salvation Army.

Hon. Mr. Scott: No, so I can tell our callers.

Mr. Martel: Send it to the hospital board too.

The Vice-Chairman: Order.

Mr. O'Connor: Here we go again, the self-proclaimed champion of freedom of information in this province, fighting amendments to his bill which would expand it to include hospitals, which would expand it to include municipalities, and no doubt other amendments that are coming along.

Are you really in favour of freedom of information? You are buying us off with the promises that you will consider hospitals under the Mental Health Act or under the Public Hospitals Act and that you will consider municipalities by way of a resolution at some later date. If you are serious about freedom of information, let us do it now and let us do it in this bill. Let us find a way to do it and get on with it. Why do you keep fighting us when we are trying to improve your bill in every way possible?

Hon. Mr. Scott: Mr. O'Connor is right, of course. It was Mr. O'Connor who thought that opposition members' files should be subject to freedom of information. When I suggested we could then get access to Phil Gillies's files, his face paled slightly.

Mr. O'Connor: It did not. I said that was fine.

Hon. Mr. Scott: But he said he supported it.

Mr. O'Connor: Phil Gillies is releasing his files daily, much to your chagrin.

Mr. Warner: To his lawyer.

Hon. Mr. Scott: The fact is that this freedom-of-information bill should extend, in my opinion, to every governmental institution, and it does. The question is, should we apply it holus-bolus to institutions that are independently elected, that have their own constituencies, without allowing them an opportunity to devise freedom-of-information schemes of their own? If the federal government tried to impose this on provincial politicians, you would all freak. I do not think we should impose this on municipal politicians without saying to them: "You have two or three years to develop a scheme of your own that meets minimum standards. Otherwise, we will act."

Mr. Martel: I am glad the Attorney General concluded with that because my colleague to my left said precisely that. He is prepared to move an amendment serving notice that the municipalities have three years to get in line.

Mr. Warner: The voice of common reason.

Hon. Mr. Scott: His amendment says that this section will not come

to force for three years, but it says at the end of the three years, this action will be applied to everybody.

Mr. Martel: What is the difference from what you have just said, that in three years the municipalities should have it in place? You said exactly the same thing.

Mr. O'Connor: Why should this scheme not apply to municipalities? Is there something wrong with the bill that you have developed that makes it not good enough for municipalities or too good for them or wrong for them? What is wrong with applying the general scheme that we have here to municipalities, to hospitals, to school boards and universities?

Hon. Mr. Scott: And to private law firms.

Mr. Martel: Carlton Williams did not advocate hospitals and universities.

Hon. Mr. Scott: We are following Dr. Williams's report.

Mr. Martel: I know why Carlton said that. He did not want to give the information in 1971 to 1975 on hiring practices of the universities. He has a vested interest in keeping it closed.

The Vice-Chairman: Is it the wish of the committee that we now vote on the amendment put forward by Mr. Warner to add clause (aa)?

Hon. Mr. Scott: Are we going to get any indication? I take it the Conservatives are going to support this, or are you going to get somebody else to answer your phone?

Mr. O'Connor: The members of this committee are individuals and can vote with their own thoughts on this. I can tell you how I am going to vote. I do not know about anyone else.

Hon. Mr. Scott: Are you going to vote or are you going to go away for the day?

Mr. O'Connor: I do not have a choice on this one.

The Vice-Chairman: All those in favour of Mr. Warner's amendment to clause (aa)? All those opposed?

Motion agreed to.

Hon. Mr. Scott: It will be apparent to all members of the public who are here that it is the NDP and the Conservatives who have imposed freedom of information upon every municipality in Ontario, effective two years from now.

Interjections.

The Vice-Chairman: Order. It is nearly 12 o'clock. We certainly do not have time to--

Mr. O'Connor: It should be apparent and put on the record that the federal government was opposed to the expansion of this bill to include municipalities and other institutions. They want a restrictive freedom-of-information bill passed in this province, notwithstanding their

loud announcements that they are the champions of this kind of legislation. They appear not to be, as is evident in this committee.

The Vice-Chairman: Thank you for the editorial.

The committee recessed at 12 noon.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

TUESDAY, MARCH 31, 1987

Afternoon Sitting



STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

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Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L., (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Miller, G. I. (Haldimand-Norfolk L) for Mr. Newman

O'Connor, T. P. (Oakville PC) for Mr. Turner

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, March 31, 1987

The committee resumed at 2:16 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: I think we are ready this afternoon. I have an admonition from Hansard people. Hansard is pointing out that it cannot record three conversations at once. Principal offenders sit in that chair and in this chair, and occasionally there are others who are joining in. If you want your pearls written down so that you can send them out to the world, you have to learn to speak one at a time.

Mr. Martel: We can blame the Attorney General.

Mr. Chairman: You can cut off anybody else, Martel, but not me. Shut

Mr. Martel: I have been thrown out of better places.

Mr. Chairman: I have been with you when you have been thrown out of better places.

On section 2:

Hon. Mr. Scott: Before we go on, I want to make sure the committee understands that when it approved "municipality" three years hence, it approved "local board." "Local board" is defined under the Municipal Affairs Act in the very broadest way. It is everything from perks boards to police boards to any commissions, committees, public utilities and libraries.

Mr. Warner: We did better than we thought.

Hon. Mr. Scott: You certainly did. I just want the Association of municipalities of Ontario to know and the committee to understand what has happened.

Mr. Martel: Have you sent them the Hansards yet?

Mr. Chairman: Let me bring you up to date on what has transpired so far. One amendment carried this morning deleting the word "government." One further amendment has been put--there seems to be some question about it--around provisions to extend this to municipalities and other agencies three years hence. One amendment has been stood down and we will deal with that as soon as we can.

You have all had the opportunity of putting various amendments that you want on the record and a chance to test the waters. It seems to me we can now go through this bill fairly quickly if I am given the latitude to call the sections.

If you want to place an amendment for the second time--in other words, if you think it is worth the committee's time to deal with the matter and if you think it is going to carry or if you have a point you want to make--we will do it that way. I will not necessarily go through all the amendments I have in my possession. I will give you the opportunity to place the amendment formally as we go through the clauses of the bill.

With that small admonition, are there any further amendments? Subsection 2(1) has been dealt with.

Mr. Sterling: Before we go ahead, I know the chairman's ambition is to get through this as quickly as we possibly can; however, there are many substantial issues contained in this piece of legislation. It is far-reaching; it is complex. I am afraid that on a number of occasions it will be necessary, for whatever reasons, political or otherwise, to put your position forward.

Mr. Chairman: You will have a chance to do that.

Mr. Sterling: Therefore, I think the fair way to do it is section by section.

Mr. Chairman: That is what we are going to do.

Mr. Warner: That is what he just said.

Mr. Sterling: What did he say?

Mr. Chairman: I will go over it again.

Mr. Sterling: I thought he was relating that he was going to steamroll through it or whatever.

Mr. Chairman: I do not believe the word "steamroll" was used.

Mr. Sterling: No, but I was trying to find out.

Mr. Chairman: I said I will go through the bill clause by clause. If you have brains enough to put an amendment, you will get an opportunity; if you do not, you will not. Is that fairly clear? You have all had a chance to table as many amendments as you want.

Mr. Sterling: What was the speech all about?

Mr. Chairman: I have tried to give everybody a chance to have a first runthrough. I am now going to go through the bill clause by clause. If you have an amendment, it is your job to point out where the amendment fits and to move the amendment. In other words, we are going to do the bill clause by clause.

Hon. Mr. Scott: Do not be surprised.

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Mr. Chairman: All right. Are there any further amendments to subsection 2(1)?

Hon. Mr. Scott: Yes, we have one. It is subsection 2(1), the definition of "law enforcement." You will recall that we asked that following

"(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings," be added:

"(c) the conduct of proceedings referred to in clause (b)."

Mr. Chairman: Do you have that amendment in your books? Is there any debate on the amendment?

Mr. Martel: I do not want the minister to get paranoid this afternoon, so I will leave it.

Mr. Chairman: Mr. Morin moves that the definition of "law enforcement" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding thereto the following clause:

"(c) the conduct of proceedings referred to in clause (b)."

Is there any debate on the matter?

Those in favour? Any opposed?

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 2?

Mr. Warner: Just one that relates to municipalities, which would be new subsection 2(3) that sets out the time frame. You will recall that this morning I made the one that specified municipalities. What I did not do is put in the time. It was suggested by counsel that was properly a different subsection.

Mr. Chairman: Could you read your amendment? Just before you argue, let him move it.

Mr. Warner: You have this one.

Mr. Chairman: Mr. Warner moves that section 2 of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

"(3) Clause (aa) in the definition of "institution" in subsection 1 shall not have effect until three years after this section comes into force."

Mr. Warner: Mr. Chairman, your printed version and that of other members will say two years. I am saying we replace that with three years.

Mr. Chairman: You have heard the amendment. Any discussion on it?

Mr. Martel: This is in keeping with what the minister thought would be the required amount of time to have. This morning I heard him say three years.

Mr. Chairman: Yes. Any further debate? Those in favour of the amendment? Those opposed.

Motion agreed to.

Mr. Chairman: Are there any further amendments to this section of the bill?

Mr. Martel: I do not think we had cleared up or finalized the discussion on institutions and hospitals.

Mr. Chairman: We are going to stand that down until we have finished with the bill. The Attorney General wants some time to produce a document.

Hon. Mr. Scott: We are looking for a letter which we hope will be here within an hour.

Mr. Martel: Fine.

Mr. Warner: In addition to that though, there was the schedule 3--

Mr. Chairman: No.

Mr. Warner: No?

Mr. Chairman: We will stand it down until it is back before the committee and then we will deal with that.

Mr. Warner: That is coming back as well?

Hon. Mr. Scott: Not this afternoon, but we will deal with that.

Mr. Morin: What about Ms. Gigantes's amendment?

Hon. Mr. Scott: They abandoned that.

Interjections.

Mr. Chairman: Excuse me. Amendments are not before the committee now until a member of the committee moves them. If it is not moved by a member, I am assuming you do not want to move that amendment.

Hon. Mr. Scott: We have one on section 2.

Mr. Chairman: Let us hear it.

Hon. Mr. Scott: I cannot read it, but Mr. Morin can move that.

Mr. Chairman: Mr. Morin moves that section 2 of the bill, as reprinted to show the amendments of the Attorney General, be amended by adding thereto the following subsection:

"Where no head is designated under class B in the definition of head in subsection 1 in respect of an institution, the minister responsible for that institution shall be deemed to be the head of that institution."

Hon. Mr. Scott: I undertook to move that in response to Mr. O'Connor's concern that there would be no head if a regulation was not passed.

Mr. Chairman: Any further debate on this amendment?

Mr. Warner: Not on this one.

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 2?

Mr. Warner: Yes, Mr. Chairman, under the definition of "institution," if I understand the procedure correctly, when the schedule 3 list comes forward in the appropriate form to be added to the bill, universities will be missing from that schedule. Colleges are on there, but universities are not. I wish to have those included. Either they go on that schedule or they are listed separately and I seek counsel's advice as to whether they should be listed separately.

Mr. Chairman: The chair is going to tell you that at such time as a schedule of that kind is placed before the committee an amendment would be in order. When the Attorney General places that before us, we would consider an amendment in order at that time, and not now.

Hon. Mr. Scott: Just to be clear, I think my friend is mistaken. "Institution" is defined in the freedom of information act as "any agency, board, commission, corporation or other body designated as an institution in the regulations." We have indicated to the committee, in our opening statement, that we will designate schedule 1 and 2 Agencies, plus the Workers' Compensation Board.

I have also indicated today that we would designate the additional agencies, boards or commissions that would have been incorporated if you went to schedule 3 agencies. I am going to provide you with a list of those and discuss one or two of them with you privately, to be sure you want them designated. But that will not lead to a change in the statute. That will be the government's undertaking to designate those by regulation, and I hereby give you that, subject to that discussion which I hope we will have tomorrow.

Mr. Warner: I appreciate that. When I read the list there is a heading which says "Colleges and universities," but under the heading it lists only colleges and does not list universities. Unless there is some other list--

Hon. Mr. Scott: No, universities are not government institutions.

Mr. Warner: Ah. Then I seek the advice of the chair as to where, appropriately, under the definition of "institution," I should place universities.

Mr. Chairman: I think I would reiterate that we have stood down a section which will, in effect, bring in another agency--that is, a hospital--under this bill. When that item is dealt with in whatever manner by the committee, I would consider amendments in order at that time.

Mr. Warner: Okay, I misunderstood. I thought we were dealing with the hospitals separately and I did not realize that you wanted--

Mr. Chairman: For the third time, that is exactly what I said.

Mr. Warner: Is that also where I should place school boards?

Mr. Chairman: That is where I would entertain those. I would entertain at the time we deal with this other matter, any other agency the committee wants to deal with. All right? Okay.

Hon. Mr. Scott: The committee has already dealt with school boards and every conceivable kind of public board which is a local board under the definition of "municipalities." School boards, under the strangely advised amendment that the committee took up this morning, will all be covered in a mass hysterical movement to information in three years.

Mr. Martel: Now, wait a moment. I can distinctly recall my friend saying to us this morning he agreed he thought it was necessary that within three years, and he used the figure three years--I am sorry we do not have an Instant Hansard around here to remind you of some of the things you do say.

Hon. Mr. Scott: When it comes, you will be reminded.

Mr. Martel: It does say in there that you indicated three years would probably be the amount of time to set out regulations governing the municipalities.

Hon. Mr. Scott: No, that is not what I said, Mr. Martel.

Mr. Martel: I am sure you said that.

Mr. Morin: That is not--

Hon. Mr. Scott: No, what I said was--

Mr. Martel: You tell me what you said.

Mr. Chairman: I am going to end this here. I had a question from a committee member about when it would be appropriate for him to place an amendment and I have given him an undertaking that we have the matter stood down that deals with that, and I would provide the occasion for you to put any amendments you want at that time.

1430

Mr. O'Connor: My question is along the same lines. Is it the Attorney General's undertaking that when he provides us with schedule 3--and I do not know what schedule 3 means or says--it will include specifically named universities in the province that are now exempted from the colleges and universities section under schedule 1?

Mr. Chairman: It does not, Mr. O'Connor, but he has indicated that he wants to talk privately about that and I am indicating that there will be an occasion to accept amendments.

Mr. O'Connor: He is shaking his head "No."

Mr. Chairman: He may not agree with this notion--I take it he does not. I am simply trying to tell you when you can put an amendment on that matter. All right?

Mr. O'Connor: Why can we not do it now?

Mr. Chairman: I would appreciate it, since there seems to be a demand to go through this bill clause by clause, if you would let me do that. We have stood down a section where it seems appropriate to take such amendments. When the committee deals with that, I would be happy to hear any amendments of any other kind.

Mr. O'Connor: Can I ask one more question then? Is it the Attorney General's opinion and advice to us, as the chief law officer of the crown, that the amendment we made this morning with respect to municipalities does include school boards?

Hon. Mr. Scott: It does.

Mr. Chairman: He says yes. Any further items on section 2? Shall section 2 carry? No, we have stood down the section, for the fourth time.

Mr. Warner: I do not want to carry a section that we have not completed.

Mr. Chairman: For the fifth time, we have not completed it, there is one matter stood down. I am asking if there are any other amendments to--

Mr. Warner: Then it should not be carried. There are no more amendments but section 2 should not be carried now.

Mr. Chairman: All right. Are there any further amendments that anybody wants to put on section 2? None.

On section 3:

Mr. O'Connor: There is an amendment pending in my name.

Mr. Chairman: Okay. I take it you are moving that section 3 of the bill--

Mr. O'Connor: No, I am not. I am withdrawing that. You were not here for the discussion this morning, but it now becomes irrelevant and I just want to withdraw it.

Mr. Chairman: Okay.

Mr. O'Connor: "Designation of head," it is called. It is not necessary.

Mr. Chairman: Are there any further amendments proposed to section 3?

Section 3 agreed to.

On section 4:

Mr. Chairman: Mr. Martel, on behalf of Ms. Gigantes, moves that subsection 4(4) of the bill, as reprinted to show amendments proposed by the Attorney General, be struck out and the following substituted therefor: "(4) The commissioner shall appoint an officer of his or her staff to be assistant information commissioner and another officer of his or her staff to be assistant privacy commissioner."

You have that amendment. It is in your book. Is there any further debate on the matter? It is simply designating one to be, to paraphrase it, privacy advocate and one to be a freedom of information advocate.

Hon. Mr. Scott: I may say that we are opposed to this, particularly if the committee does not spell out the jurisdiction of both of them, because if you are appointing officials who have a specific designation and if you are requiring the commissioner to appoint them, you have to spell out what their jurisdiction is.

If they are both to have parallel, overlapping jurisdiction, that is one thing. If they are to have different jurisdictions, we should define what those are, because once you get these two people in place, they cannot be pushed around by their boss any more. They have independent job titles and, frankly, I would much prefer to have the committee reject this proposal and allow the commissioner to establish the kind of staff he thinks is necessary and appropriate.

We want him to run this system and it seems to me that this is to meddle in what is appropriately his affair, unless you are prepared to define what jurisdiction each of these people has.

Mr. Martel: If I could speak to it, I think we went through part of this argument last Tuesday. I think the Attorney General at that time said he felt it was up to the commissioner whether he wanted to appoint two heads. I think if you want to divide the powers, there are fairly clean lines on which you could define those powers.

Hon. Mr. Scott: If you moved an amendment, I would be grateful.

Mr. Martel: I can prepare another amendment, but when you talk about privacy and a person appointed to be the privacy commissioner, he is dealing with the privacy section of the act and not the other section of the act. As to leaving it up to the commissioner to decide whether he is going to make the appointments, I think I used the example of our friend the former Ombudsman, who ran his own show at times, somewhat in conflict with what the government wanted, but it was his act and he was strong enough to resist some of the changes or suggestions that were being made.

Here, we are simply saying the commissioner will outline the powers that each of them has and that he will have two heads so that there is no conflict of one person trying at one time to be the privacy commissioner and at the other time trying to provide information, because in fact the two would conflict. I think it is a pretty simple definition.

Hon. Mr. Scott: Can I ask you a question?

Mr. Chairman: I would like to let Mr. Martel finish, and then perhaps--

Hon. Mr. Scott: Thank you. I am sorry.

Mr. Martel: I think it is pretty obvious what we are instructing the commissioner to do and the duties that would prevail in each area. We are just telling him he cannot do--if he chose not to appoint two different people, what would you do?

Mr. Chairman: It is not helpful when you ask him questions, because you invite him to butt in. Are you finished?

Mr. Martel: Yes.

Hon. Mr. Scott: I have a problem, and I would be grateful to have a sense of the committee. If these are both appointed, will the assistant privacy commissioner, for example, be able to hear access-to-information disputes? Will the assistant information commissioner be able to hear access-to-information disputes that involve a privacy response?

When we set two people up with job titles, if the job titles do not mean anything, that is okay, but if they mean something in the sense of giving to one an exclusive area and to the other an exclusive area, we had better understand that means not only must they do what is in the exclusive area but also they cannot do what is outside it.

I am not opposed to the idea. I simply want the committee, if it wants to do this, to grapple with the realities.

Mr. Martel: You talk about grappling with the realities. Let us take the situation where the commissioner decides we should have two, and he has that authority under this act. He does not have to, but he can.

Hon. Mr. Scott: Then he sets up the guidelines.

Mr. Martel: That answers all the questions you have been posing to me. All we are saying is that he must appoint two. Then he would designate.

Mr. Chairman: It is still complicated.

Mr. O'Connor: I can advise that I am inclined to support this amendment, and I think some of my colleagues in my party are, in that we have a similar amendment before the House. Given that reality, would the Attorney General prefer that the matter be deferred, perhaps until tomorrow, to allow his staff to go through the bill and see where it might be necessary to fit in the necessary powers of these two additional officials?

Hon. Mr. Scott: No.

Mr. O'Connor: You do not? In that case, I am content to pass it today.

Mr. Chairman: Any further debate on the amendment? Those in favour? Any opposed?

Motion agreed to.

Mr. Chairman: Any further amendments to section 4 of the bill?

Section 4, as amended, agreed to.

Sections 5 to 9, inclusive, agreed to.

On section 10:

Mr. Chairman: Mr. Sterling moves that section 10(1) of the bill be deleted and the following substituted therefor:

"10. Every person who is,

"(a) a Canadian citizen;

"(b) a permanent resident within the meaning of the Immigration Act, 1976 (Canada); or

"(c) a corporation incorporated by or under a law of Canada or a province,

"has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22."

Is there any debate on the amendment?

1440

Mr. Martel: I have a couple of questions. I asked last week if we could get a clarification on whether the definition included landed immigrants.

Mr. McCann: As I understand it, the term "landed immigrant" no longer appears in the federal Citizenship Act. The equivalent term is "permanent resident." I do not know whether it is exactly equivalent to what was called a "landed immigrant" under the former system, but it is the same basic idea. It is a person who is not a citizen but has some rights of entry into Canada and that sort of thing. "Landed immigrant" is just not a term that is known to the law any more, if I can put it that way.

Mr. Martel: What concerns me about this section, if I can speak to it, is that you exclude people who pay their taxes here as well as at the municipal level, residents in my community who are from the United States operating a mine. That mine is closed now, but for 25 years they lived in my municipality. Despite the fact that they pay tax like everyone else here, you deny them a right to get information. I find that we are putting strictures on people when in fact what we are trying to do is open up the process so that people are free to get information. I worry about why my friends would move against people getting information.

Mr. Warner: A couple of questions. I wonder if this also excludes visa students, for example, who are attending university and political refugees living in our country.

Mr. Chairman: It would depend on their status under the Immigration Act, I guess.

Mr. Warner: But if they are here on a visa or as refugees, then they are not considered permanent residents under the definition in the Immigration Act.

Hon. Mr. Scott: I would like to indicate that the government is opposed to this amendment for the reasons that the New Democratic Party has given. We see no reason that access to this act should be restricted. The Charter of Rights applies to a much broader group than this, and we think the Freedom of Information and Protection of Privacy Act should apply to the same group.

Mr. Sterling: In arguing for the motion, I believe the federal Access to Information Act is restricted in a similar way to Canadian citizens. The fact of the matter is that most of the examples brought forward in talking about foreign people who would be here, either with landed immigrant status or as Canadian citizens, would be given the information they would be requesting. This would really restrict somebody from pressing the issue to a larger extent, so that if a government agency normally gave out information about whatever, it is not going to ask whether you are a Canadian citizen or a citizen of Ontario or whatever.

This process incurs some expense for whatever level of government is

responding to it, and while there are cost provisions contained in this act to charge an applicant for the information, it has been the practice in most jurisdictions to waive those fees on most occasions, so that there is not really true cost recovery in most of the situations.

I do not find it an inhibiting kind of section. Basically, the taxpayers pay for the running of the Ontario government--the agencies, boards and commissions--and therefore the right to demand that information should be restricted in that sense. As I say, there are some extreme examples in the United States where people who are not residents or citizens of the United States have used the act extensively and cost the United States considerable amounts of money as a result.

I might add too that the experience in terms of information practices tells you that the number one user will be business. Therefore, what you are doing in effect by not limiting it is perhaps subsidizing American corporations or any other kind of corporation. Number two, the second user normally involves the criminal element in the United States. It is the second largest user, and I have no truck with excluding foreign people who are engaged in criminal activity in terms of their access to the process.

Those are my arguments for it. I think it is a restriction that is not unreasonable under the circumstances.

Mr. Chairman: Those in favour of the amendment? Those opposed?

Motion negatived.

Mr. Chairman: Are there any further amendments to section 10?

Shall section 10 carry?

Mr. Sterling: Just a minute.

Mr. Martel: No wonder you cannot consider a vote. You will not move
nem.

Hon. Mr. Scott: No. He withdrew the next one.

Mr. Martel: Did you withdraw subsection 10(2)?

Mr. Sterling: That is what I was just looking at.

Hon. Mr. Scott: Yes, he did.

Mr. Sterling: I did not, because you were going to look at this. I
did not withdraw that.

Hon. Mr. Scott: I thought we concluded that Mr. Sterling's amendment
subsection 10(2) is, in practical terms, exactly the same as the subsection
10(2) that is in the bill we amended. We suggested it may have been that our
amendment crossed with his.

Mr. Chairman: That is counsel's comment on the matter too.

Mr. Sterling: With respect, I would like to say that--

Mr. Chairman: Do you want to finish this amendment?

Mr. Sterling: Yes. I do.

Mr. Chairman: Mr. Sterling moves that subsection 10(2) of the bill be deleted and the following substituted therefor:

"10(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22, the head of the institution shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions."

Mr. Sterling: It puts a positive onus on the head of the institution to disclose as much as he can rather than to work it in a negative fashion, which the existing section does.

Hon. Mr. Scott: The existing section says, "the head shall release." That is hardly negative, but I do not care.

Mr. Chairman: Is there any debate on the matter? Are you ready for the question?

Those in favour of the amendment? Those opposed?

Motion agreed to.

Mr. Chairman: Section 10, as amended, agreed to.

On section 11:

Mr. O'Connor: I have an amendment to section 11 that we discussed at some length in going through the previous procedure. At that time, I believe the Attorney General (Mr. Scott) indicated that he could live with subsections 2, 3 and 4 of my amendment but that he had some difficulty with clause 11(1)(b). Perhaps he could bring us up to date on his thinking. That may limit, or otherwise, the debate that shall follow.

Hon. Mr. Scott: I think what we said was that we could not live with clauses 11(1)(a) and 11(1)(b) as you prepared them. We were opposed to that. I think we also said that we were opposed to subsections 11(2), 11(3) and 11(4) but that they did not present as serious a problem as the first ones. I would not like to say that I agreed to them.

Mr. O'Connor: I am sorry. I thought you indicated that you could live with subsections 11(2), 11(3) and 11(4) or a scheme of notice as set out in those subsections, where practicable, with the opportunity for the person alleged to have caused the environmental problem to have an opportunity to meet the concerns of the government.

Mr. Chairman: Mr. O'Connor, are you going to move this amendment or not?

Mr. O'Connor: Perhaps I will, depending on what the Attorney General says. Yes, I will move the amendment. There is no question.

Mr. Chairman: In this committee I want to be as lenient as I can, but I do not want to have a whole lot of argument about something that somebody is not going to move.

Mr. O'Connor: I will move the amendment.

Mr. Chairman: Mr. O'Connor moves that section 11 of the bill be struck out and the following substituted therefor:

"11(1) Despite any other provision of this act, a head shall disclose any record to the public or the persons affected as soon as practicable if,

"(a) the head has reasonable and probable grounds to believe that it is in the public interest to do so for reasons of public health or public safety or to protect the environment; and

"(b) the public interest in its immediate disclosure clearly outweighs any importance any financial loss or gain to, prejudice to the competitive position of, interference with contractual or other negotiations of or rights to personal privacy of any person or persons to whom the information relates.

"(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

"(3) The notice shall contain,

"(a) a statement that the head intends to release a record or a part of record that may affect the interests of the person;

"(b) a description of the contents of the record or part that relate to the person; and

"(c) a statement that if the person makes representations forthwith to the head as to why the record or part thereof should not be disclosed, those representations will be considered by the head.

"(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed."

Hon. Mr. Scott: It is coming back to me now where we were last time. The New Democratic Party has an amendment to remove "grave." That, I take it, is abandoned, or is it going to be moved? The issue I presented to Mr. O'Connor was that if the word "grave" were there, I could live with subsections 2, 3 and 4, but that if "grave" was not there, I could not live with subsections 2, 3 and 4. I think the answer to Mr. O'Connor depends in part on whether "grave" is removed from section 11.

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Mr. Martel: Let me ask the Attorney General a question, because I am worried about the word "grave," and as someone who is doing a lot of work in the field of occupational health. Only the people who work within the immediate area where isocyanates are being utilized, for example, might become sensitized. The rest of the people in the operation, maybe another 150, are not affected. Two or three workers might be affected.

What worries me is that one can say, "Out of 200 workers, there are only two or three who might have a problem." It is too easy to abandon that because it is not a grave environmental health problem to the public at large but only to one or two workers who might be affected. That is what gives me some

concern, because while it is not to the public at large, it is to two workers.

The Ministry of Labour has two of its own inspectors who are now sensitized to isocyanates because the Ministry of Labour did not provide adequate protective equipment to them when they were doing their job. That is not a serious problem for the public at large, but because these people work there frequently, they are exposed to it frequently. The same applies to noise and any number of substances.

Hon. Mr. Scott: The fact that two people will die or be injured out of 100 does not affect the gravity of the impact at all. It does not become less than grave because 98 people will not be affected by it. Its gravity is in the nature of the effect that exists with respect to those people who suffer from it.

An environmental health or safety hazard that I would not regard as grave is, let us say, a four-inch pothole on the street. It is conceivable that someone going through it at a high rate of speed could be killed, but the chances of it are so remote that I would not regard that as a grave hazard, even if every car on the road went through it and had a bump. It would remain a grave environmental hazard if two people out of 100 were threatened with an illness that was going to injure them seriously.

Mr. Martel: That was my concern for that section, the interpretation that might be placed on it.

Mr. Chairman: Are you for or against the amendment that is now before the committee?

Mr. Warner: We are trying to work out something.

Mr. Chairman: I do not mean to push for a position.

Is there any further debate on the amendment that is now before the committee?

Mr. Sterling: Are we on the amendment--

Mr. Chairman: We are on an amendment moved by Mr. O'Connor to section 11.

Mr. Sterling: Okay.

Hon. Mr. Scott: Is it being presented as one?

Mr. Chairman: Yes.

Mr. Sterling: As I understand it, Mr. O'Connor would accept, in lieu of his particular amendment, that the words contained in Bill 34 be subsection 11(1) and that subsections 11(2), 11(3) and 11(4) be added as appendages to the existing words. I believe that would--

Mr. Chairman: (Inaudible) Mr. O'Connor say that.

Mr. O'Connor: All right. If it requires amendment, I will abandon the amendment that I proposed in relation to subsection 11(1) and move that section 11, as set out in the bill, become subsection 11(1), thereafter followed by subsections 2, 3 and 4, as set out in my amendment.

Mr. Chairman: Okay. Let me see if I can clarify that for the committee. Mr. O'Connor is deleting some words from his proposed amendment. He is deleting what is identified in your book as clauses 11(1)(a) and 11(1)(b). Then we are renumbering it so that subsections 11(2), 11(3) and 11(4) would be renumbered 11(1), 11(2) and 11(3).

Hon. Mr. Scott: We have no trouble with that. I understand "grave," that amendment, will be dropped.

Mr. Chairman: Okay. Is there any further debate on the amendment? We have now deleted the first section and simply renumbered them, so that subsection 11(1) would be, "Before disclosing a record under subsection 11(2)"--

Interjections.

Ms. Baldwin: We said we would keep 11 as in the bill, as 11(1). Basically, what he has is a motion that section 11 is amended by adding subsection 2.

Mr. Chairman: Okay. We are adding a subsection 2. If you could follow in your book, you would delete the first one that is in the name of Mr. O'Connor, and in its place you would put the section that is in the printed act; then we would do 2, 3 and 4 as Mr. O'Connor has outlined. Is there any further debate on the proposals? Those in favour? Any opposed?

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 11?

Mr. Sterling: Maybe the legislative counsel can help me. I think there is a concern, because of one of the submissions, that this section perhaps should be placed in front of section 10 and be given another heading as such under the act. Does that have to be moved? It is just because of their misunderstanding in reading the section. Their reading of the section was that it was in response to a request for access that this section kick in. They misread it totally.

Mr. Chairman: I have no amendment of that kind before me anywhere. Is there any inclination to do any renumbering?

Hon. Mr. Scott: We have no inclination to do any renumbering. If there is any concern about identifying the chapter headings, I do not think that is part of the bill, is it?

Ms. Baldwin: In response to your question, my view is that sections 10 and 11 both deal with the issue of access to records. Section 10 is the more general rule. Section 11 is a more specific rule. Normally, as we draft, we set it out in this order.

Mr. Sterling: The obligation to disclose without request is the thing that is missing and it misses in the opening parts of the words.

Hon. Mr. Scott: Put the obligation that subsection 11(1) imposes is imposed not on a member of the public; it is imposed on a head of a ministry or other agency. Wherever it is in the act, they had better find it. I think they will.

Mr. Sterling: I agree with the Attorney General, but one of the groups that came in front of us referred to this whole section and drew up a significant part of its brief on the understanding that this section was in response to a request and, therefore, mixed it in with section 10.

Hon. Mr. Scott: I do not know where they got that view because it does not say anything about request.

Mr. Chairman: I am going to stop you there. I have no amendment. If there is an amendment to be proposed, fine; I would be pleased to hear it, but this is exactly what I do not want to do.

Are there any further amendments to section 11? Shall the section carry?

Section 11, as amended, agreed to.

On section 12:

Hon. Mr. Scott: There is a big number of amendments here, four or five, I think. I wonder how you propose to deal with them, Mr. Chairman.

Mr. Chairman: I propose to ask for amendments. If anybody moves them we will take them. If nobody moves them, we will not.

Hon. Mr. Scott: We have some.

Mr. Morin: It is clause 12(1)(b). Is that correct?

Mr. Chairman: That is where we are at.

Mr. Morin moves that clause 12(1)(b) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "proposals" in the first line and inserting in lieu thereof "policy options."

Is there any discussions of that? We had agreed previously that we are all in agreement with this.

Hon. Mr. Scott: We have another amendment that is parallel to this, which Mr. Morin no doubt will be coming to. For each member of the committee, I will have what the new section 12 will look like if our two amendments are accepted, just so you will not have the difficulty of trying to read it. Perhaps we can circulate that.

Mr. Chairman: We have a motion made by Mr. Morin. Those in favour of the amendment as proposed by Mr. Morin on clause 12(1)(b)? Opposed?

Motion agreed to.

1500

Mr. Chairman: Mr. Morin moves that clause 12(1)(c) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "containing background explanations, analyses of problems or policy options" in the first and second lines and inserting in lieu thereof "that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems."

This is the one that follows right after that one.

Mr. Morin: Clause 12(1)(c).

Mr. Chairman: It is an amendment to 12(1)(c). Is there any debate on the matter? We had previously agreed among ourselves that this was approved by all parties. Are there any further questions on the matter?

Mr. McCann: What I just handed to you is the way clauses 12(1)(b) and 12(1)(c) would read if the amendments proposed by the Attorney General were carried. It is just for convenience because otherwise it is hard to put it all together and read it. That is what it would look like if the amendments were made.

Mr. Chairman: Any further debate? Those in favour? Those opposed?

Motion agreed to.

Mr. Chairman: Mr. Sterling moves that clauses 12(1)(b), (c) and (e), as amended, be deleted and the following substituted therefor:

"(b) A record created solely to present proposals, recommendations, explanations, analysis or policy options to the executive council or its committees;

(c) a record containing background explanations, analyses of problems or policy options created solely for a presentation to the executive council or its committees for their consideration in making decisions before those decisions are made and implemented;

(e) a record created solely to brief a minister of the crown in relation to matters that are before or are proposed to be brought before the executive council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and."

Mr. Sterling: I think the members have a copy of my amendment.

Mr. Chairman: This is an amendment in your book standing in the name of Mr. Sterling. He is moving (b), (c) and (e), as amended, be deleted and the following substituted therefor. Have you identified that?

Hon. Mr. Scott: It seems to me that, having passed the previous amendments, this amendment is absolutely contradictory to the previous one.

Mr. Chairman: That is an astute observation. Any further discussion on the amendment?

Mr. O'Connor: Solely.

Hon. Mr. Scott: It is solely inconsistent.

Mr. Sterling: Mr. Chairman, as to the method by which you are going through these amendments, I would have raised the matter when we went through the particular sections but that is not the way it is falling out in terms of these amendments.

Mr. Chairman: You are saying I did not call for amendments to section 12?

Mr. Sterling: No, I did not say that. I said you are calling amendments as they appear in the book.

Mr. Chairman: No, I am not calling them at all. I am asking for amendments to any section of the bill and any member of the committee is free to place amendments. If you want to place them, place them.

Mr. Sterling: I have no objection, for instance, to the Attorney General's amendments to his existing sections if that is what the committee wants as the sections for this subsection 12(1) of the act. However, I think the words are too broad in terms of this section and would place my motion in terms of restricting those words further than they are in the section.

Mr. Chairman: Your amendment is in order and it is on the table. Any further debate on the amendment?

Mr. Sterling: Basically, the amendment restricts the cabinet records that are exempted to records that are solely created for cabinet consideration and, therefore, does not allow a government to hide behind a number of other records, advice, reports, etc. that are created in the generic sense. They may in fact be used on the periphery of a cabinet's submission but do not go to the heart of it. That is why I have re-created the sections, putting in "created solely" for the purposes of cabinet deliberations.

Mr. Martel: Run that by me again because I do not know what we are voting on. The section now says records, for example, would be "a record containing proposals," and that has been amended to "policy options" or "recommendations." What does yours say?

Mr. Sterling: As I would view it, the difference between the (b) that is contained in clause 12(1)(b) as amended--instead of "proposals" he has put in another word for that--would be that if the government were trying to protect a particular proposal that was floating around a ministry, it would have to show the information commissioner, under my case, if that record was in fact created. The primary purpose of it was to be created for the cabinet submission and it was not being created just for background material, etc. and was not on the periphery of the proposal to cabinet, but was going to the heart of the proposal.

Mr. Martel: But surely that means the same. You jumped from the one I was looking at and trying to understand. You jumped to the next one of background material, which is a second one you want, the "record containing background explanations".

I guess I am having difficulty with the word "solely" because if I wanted to declare anything--assuming cabinet--I did not want you to know or to release, I could put it in any number of places. Like a chameleon, I could dress it up in any colour I wanted to suit the occasion that would not release the information. It is not going to take people very long to realize how to prepare a document in a way that makes it such that it is not going to be given to anyone seeking information.

It is much like the Americans, as I said the other day. When they want a bill killed they put a rider on a clause, one that kills the bill because

nobody will vote for it. You can dress it up and who is going to be any the wiser?

Mr. Chairman: Is there any further debate on the amendment? All those in favour? All those opposed?

Motion negatived.

Mr. Martel: Did you accept one of these the other day on clause 12(1)(c)? Did the government accept that one?

Mr. Chairman: There is a government amendment to clause 12(1)(c).

Mr. Martel: That is the government's itself; okay.

Mr. Chairman: Are there any other amendments? There are several on section 12 in the book if anyone wants to put them.

Hon. Mr. Scott: We have one with respect to clause 12(1)(c). Have we done that?

Interjection: We have done that.

Mr. Martel: Let me talk to clause 12(1)(c) if I might and I will move it so that I can talk to it. All right?

Mr. Chairman: We will try to identify this for you. This is one that is in the book under the name of Ms. Gigantes.

Mr. Martel moves that clause 12(1)(c) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "and implemented" in the fifth and sixth lines.

Mr. Martel: The reason for this is that we know governments love to play games. I do not think there was a cabinet minister in the last administration who did not come to Sudbury to announce the cancer centre, but none of the details, and we are still waiting for it. The Premier was there. The Minister of Health was there. The previous Minister of Health was there.

Hon. Mr. Scott: They must have lost it on the way up.

Mr. Martel: It is still coming and I think what Ms. Gigantes is trying to say is that you either--I could use some vernacular that would not suit it; something to do about the pot. Governments should be restricted. Over a 35-year period they announced the Timmins highway 103 times before it finally got built. They did not have to produce any of the documentation with respect to that. They could just announce it and reannounce it. We are saying that we should strike out the word "implemented" because you can go on forever and the Attorney General is aware of that.

Hon. Mr. Scott: It is a lot different with oppositions. Oppositions are never repetitive.

Mr. Martel: Sure, we have to be, just to try to educate the government.

Mr. Sterling: What does "implemented" mean? If the government announces something, is that implemented?

1510

Hon. Mr. Scott: The phrase is, "before those decisions are made and implemented." Typically, a decision will be made by the determination of an official in the bureaucracy or the cabinet that, "I think we are going to do this." "Implemented" means some formal step taken by way of announcement, putting a shovel in the ground or something other than making it. For example, in my ministry there may be 20 or 30 decisions made a day but nothing may happen until someone decides that we now are going to go with this. It is when you go with this that it is implemented. Why you should have access to my mind when I make a decision if nothing comes of it--

Mr. Warner: No, just your decision.

Hon. Mr. Scott: Yes, when it is made and implemented.

Mr. Sterling: I would be favourable to an amendment that could perhaps add the words "or announced" or something of that nature. I do not know if that is the proper legal--

Hon. Mr. Scott: If I could interject, "and implemented" is more favourable to the public than "or announced," because there may be a number of decisions that are implemented; that is to say, steps are taken to make them real even though they have not been announced and then there would be disclosure.

Mr. Sterling: Would there not be a case where you could announce that there is going to be a program or whatever for election purposes and that would not be implemented for a month or whatever?

Hon. Mr. Scott: No, let me give you an example. You decide to build a bridge over the Burlington Bay Skyway. You make the decision when someone says, "I think we should build a bridge over the Burlington Bay Skyway." You will never know because he has just thought about it in his mind. He has made the decision. He is the minister. It is implemented when you either announce it on the one hand or when you, for example, retain an engineer to do the drawings. You are then implementing that decision. When you take a step beyond the decision, you have begun to implement it and at that moment disclosure is permitted.

Mr. Martel: One could argue that when Bill Davis came to Parry Sound and announced a rail line from Parry Sound to North Bay, one could have said: "Give us the background material. We want the information on which this was based. It is not just posture." That is what I am trying to avoid.

Hon. Mr. Scott: Yes, that could be implemented because it would be announced.

Mr. Martel: There was not a paper anywhere on it.

Hon. Mr. Scott: Well, then you would get--

Mr. Martel: It still has not been forthcoming; that was in 1971.

Interjection: Did they build it?

Mr. Martel: They are still looking for that rail line.

Mr. Chairman: I will slip you back into this decade while we--

Mr. Martel: I just know what goes on.

Mr. Chairman: Is there any further debate on Mr. Martel's amendment? Those in favour of Mr. Martel's amendment? Those opposed?

Motion negatived.

Mr. Warner: Be it noted you guys supported it yesterday.

Mr. Chairman: If it had not been for Warner, you would not have voted for your own amendment.

Any further amendments to section 12?

Mr. Martel: We have one. Should we have the discussion now, Mr. Chairman--I seek your guidance--on Ms. Gigantes's amendment, which covers at least six or seven sections of the bill, the interest override. Maybe we could ask the Attorney General if he is prepared to--would it work to have this in the appeal section as opposed to one on each section? As the Attorney General is wont to go out and see what the opposition's thinking is, he might tell us what his thinking is on an interest override in the appeal section as opposed to section by section.

Hon. Mr. Scott: The override that Ms. Gigantes's amendment proposes is an override not for the commissioner but for the head.

Interjection: But then the commissioner could be--

Hon. Mr. Scott: The commissioner would also get it. The head would also have the right to ignore the section as well for the override. I think we have to deal with the override at some point. I am prepared to rely entirely on what Professor Williams had to say about the undesirability of overrides, except in one case. Do you want to deal with the override now, once and for all? I am happy to deal with it.

Mr. Chairman: It seems to me that it is in order to move an amendment and we have certainly been given notice of it. It does strike me, frankly, that if you want a general discussion on the principle of a public interest override, perhaps it would be more appropriate to do that under the appeal section than under this one, but a motion would be in order. We have certainly been given notice of it.

Mr. Sterling: I am just guessing why Ms. Gigantes has done it both ways, but she may be giving the option to the committee to have the override only apply to certain exemptions. That is the only reason why she may be--

Mr. Chairman: If I can help you out a bit here, if you want to have a general discussion about a public interest override, if we could paraphrase it that way, it seems to me the general discussion belongs under a general section of it, under appeals or wherever you might want to raise it. That would be the appropriate way to do it.

You do have in front of you amendments to almost every section of the bill, where Ms. Gigantes has proposed it. I am leaving it up to you to raise the amendments and put them. The only plea I would make is, let us not have a general discussion now which leads to the conclusion that we ought to do this somewhere else. If that is your opinion, then let us leave it to a general section of the bill and deal with it there.

Mr. O'Connor: It is a very important subject, which appears throughout the bill. It goes right to the heart of a freedom-of-information bill. Because of that, my suggestion would be to stand down the discussion on it until Ms. Gigantes can be here and defend her amendments, not today or tomorrow, but some time in the future. We will not be finished tomorrow. I presume we will not finish all of the amendments by the end of tomorrow. By then, she may be finished with Bill 154 and be able to do it. Is that a possibility?

Mr. Chairman: Frankly, no. Just to explain, in our own caucus we had to divide up our responsibilities and we have divided them up in this way. These two gentlemen, inept as they are, are going to carry the bill for the New Democratic Party, while Ms. Gigantes is fighting other battles.

Mr. O'Connor: That is the problem. In their hands it may fail.

Interjections.

Mr. Sterling: Can we take your suggestion to stand down this subsection and each subsection dealing with the exemptions to the general discussion on it, with the understanding that we can come back and deal with each of the exemptions separately if that is the choice of the committee at that time?

Mr. Chairman: Let me put it to you this way. If you recall, initially, I wanted to ensure that we kept as much flexibility as we could. We are in committee and we can be a little freer with things than normally. I did say that if there were critical matters which it appears the committee wants to review, we could do that.

If you wanted to set aside, for example, the general override provisions and discuss them once under the appeal section and you decide that you should go back and do it through each clause, I would allow that because, as I said: "We will test the waters. We will see what is going to fly and what is not. If we can make this work, we will make it work."

We have already set a precedent by allowing certain things to be stood down, so I do not have any problem with that. If you get to a general discussion and you decide you want to go through each clause and insert it, I would be reasonable enough to let that go. Is that what you want to do, Mr. Martel?

Mr. Martel: Yes. I do not want to go through the discussion seven times.

Mr. Chairman: Are there any other amendments to section 12? Shall section 12, as amended, carry?

Mr. Martel: Just a second. There is one by Ms. Gigantes changing "20" to "10."

Mr. O'Connor: What happened to that one?

Mr. Chairman: It did not get moved. So if it does not get moved, it does not get moved.

Section 12, as amended, agreed to.

1520

On section 13:

Mr. Chairman: Are there any amendments to section 13?

Mr. Sterling: I have an amendment to subsection 13(3).

Mr. Chairman: Mr. Sterling moves that subsection 13(3) of the bill be amended by adding thereto: "or where the head of a public institution has publicly cited as the basis for making a decision or formulating a policy."

Any discussion on the amendment?

Hon. Mr. Scott: I do not understand how this works. Subsection 3 deals with how old, and the amendment seems to branch out into some new area. I do not understand how it works.

Mr. Sterling: If you leave out "is more than 20 years old"--

Hon. Mr. Scott: But you have not left that out.

Mr. Sterling: I have created another circumstance.

Hon. Mr. Scott: So it reads, "Despite subsection (1)"--which is the section that permits you to refuse to disclose--"a head shall not refuse...to disclose a record where the record is more than 20 years old."

Mr. Sterling: "or where the head of a public institution has publicly cited as the basis for making a decision or formulating a policy."

Hon. Mr. Scott: Are you striking out?

Mr. Chairman: No, he is not. The amendment adds words, and the words are, "or where the head of a public institution has publicly cited as the basis for making a decision or formulating a policy."

Hon. Mr. Scott: Apart from the fact that it is not grammatical, I take it it would then read:

"Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than 20 years old or where the head of a public institution"--that phrase again--"has publicly cited as the basis for making a decision or formulating a policy."

I do not know what is intended by any of that.

Mr. Sterling: After "cited" there should be "a record."

Mr. Chairman: "Cited a record as the basis for making a decision or formulating a policy." You should insert the words "a record" after the word "cited" and before the word "as."

it, but if you disclose it to a deputy minister, it does? I would think if either of those propositions were possible, you would prefer the other one.

Mr. Warner: It might be helpful to have both, actually. When I think back to the long, involved struggle to obtain the documentation with respect to nursing homes, much of the problem was within the senior bureaucracy. The very records that were essential to solve the problem were always unavailable. The cleansed records that we eventually obtained were from the minister, but the real records we were looking for were with the deputy minister and below, and we were never able to obtain those.

Hon. Mr. Scott: Let us assume that is the problem motivating you. The amendment you have proposed is going to make it harder for you in the future, not easier, because it is going to say the information can be refused to be disclosed only if it comes to the minister.

It seems to me you are going to get everything you want under subsection 2 in clauses (a) through (l). What you want to protect under subsection 1, if you want to protect anything, is advice, but you get factual material, statistical surveys, reports, impact statements, tests, studies, feasibility studies, final plans or proposals. All that stuff comes through in whatever form it appears.

All we are saying is that advice or recommendations of a public servant should be protected, irrespective of whether a recommendation is made to the deputy or the minister. You say it should be protected only if it goes to the minister but not if it goes to the deputy.

1530

Mr. Warner: I take it that in the case I cited I would have been able to get the material that never made it to the minister's desk?

Hon. Mr. Scott: You would not have been able to get the material under this, and the way you are amending this--"to a minister of the crown"--you would not have been able to get the material you actually got, which is the advice that the minister got.

Mr. Chairman: Any further debate on the matter?

Mr. Warner moves that subsection 13(1) of the bill be amended by striking out "of" in the second line and inserting in lieu thereof "to a minister of the crown made by a public servant."

Are you clear on the amendment? Those in favour? Those opposed?

Motion negatived.

Mr. Chairman: Any other amendments to section 13? Shall section 13, as amended, carry?

Mr. Warner: It is noted that there is another one of these public interest overrides in here.

Mr. Chairman: We have agreed that you may revert, if you want to, on that. Does section 13 carry?

Section 13, as amended, agreed to.

On section 14:

Mr. Sterling: I have an amendment to this section which is being copied. Did we get those copies back?

Mr. Bossy: Just for clarification, Mr. Chairman, can we go back and reopen each section again?

Mr. Chairman: No, that is not the agreement. The agreement is that on a very specific point we have agreed that we will have a general discussion on the override principle under the appeal section. If the committee decides it wants to provide that there, it can. If you decide you want to provide an insertion in each clause, you can.

Mr. Bossy: But it will be in the appeal section.

Mr. Chairman: No, we have agreed now that--

Mr. Bossy: How can we go to the appeal section and go back?

Mr. Chairman: Do not argue with me; listen. You want the ruling. The ruling is that when we get to the appeal section, we will have a general discussion about the principle of an override provision, and the committee will have sufficient latitude that you may insert an amendment at that stage, or if the committee deems it acceptable, you will be able to put in a clause on the override provision to go into each of these sections of the bill. That is what we have agreed to do.

Are there amendments to section 14 of the bill?

Interjection: Are we going to take a break?

Mr. Chairman: Okay. This might be an appropriate time to take a five-minute break. We are waiting, I am told, for some amendments to be photocopied, so let us adjourn for five minutes, and we will pick it up on section 14.

The committee recessed at 3:34 p.m.

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Mr. Chairman: I call the committee to order. Mr. Martel asked for a minute to confer on a proposed amendment he might put. I have agreed to give him that, and in about 30 seconds' time, I think I will want to proceed.

Are we ready to proceed now? I am calling for amendments to section 14. Mr. Martel, do you have one you want to put?

Mr. Martel: I only want to change clause 14(1)(1).

Mr. Chairman: Okay. Mr. Martel moves that clause 14(1)(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "offence or hamper the control of crime" and inserting in lieu thereof "unlawful act." Is that correct?

Mr. Martel: Right.

Mr. Chairman: Is there any debate on the amendment?

Mr. O'Connor: I have a question: What is the difference?

Mr. Martel: It is clearer for people who are not lawyers.

Hon. Mr. Scott: We are prepared to support that change.

Mr. Chairman: Any further debate on that amendment?

Mr. O'Connor: Is it broader or does it mean exactly the same?

Mr. Martel: It is clearer. That is all.

Mr. Chairman: It is a little clearer and perhaps a bit broader, I think some would contend.

Mr. O'Connor: Yes, it is broader. Okay.

Motion agreed to.

Mr. Chairman: Any further amendments to section 14 of the bill?

Mr. Martel: Mr. Chairman, I want to indicate that, as with the others, we will deal with the whole of the override. I just want to note that we will get the overall discussion in somewhere.

Mr. Chairman: Any further amendments to section 14?

Mr. Sterling: I had moved an amendment prior to the meeting today and it was suggested by legislative counsel that it be included as a separate subsection of this act under subsection 14(5). There were two proposals put forward by legislative counsel, and I believe each member has them.

Mr. Chairman: Go ahead and move it.

Mr. Sterling: I think there was some acceptance on the part of the Attorney General before.

Mr. Chairman: Yes.

Mr. Sterling: In that spirit of co-operation, I will accept either one he would like and put that amendment forward.

Mr. Chairman: Okay. Just to bring you up to date, Mr. Sterling had provided some wording through an amendment, I believe, to--

Mr. Sterling: Subsection 14(4).

Mr. Chairman: Subsection 14(4). There was general agreement on that. We are now looking at two options for wording. I take it you are asking the Attorney General to indicate his preference and you will move that one.

Mr. Sterling: Yes.

Hon. Mr. Scott: We prefer the longer one.

Mr. Chairman: Mr. Sterling moves that section 14 of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

"(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections."

Hon. Mr. Scott: In order to be conciliatory as we near the end of the day, I would like to indicate that I have no objection to this and I will, on the condition that no one ever asks me what it means.

Mr. Chairman: That is about as close as this guy gets to being nice.

Hon. Mr. Scott: That is right.

Motion agreed to.

Hon. Mr. Scott: That is all for today, Mr. Sterling.

Mr. Martel: Do you want to hold section 2? I have the letter from--

Mr. Chairman: No, I do not want to deal with that right now. Let us see how far we can get here.

Mr. Martel: All right.

Section 14, as amended, agreed to.

Sections 15 and 16 agreed to.

On section 17:

Mr. Chairman: Mr. Martel moves that subsection 17(1) of the bill, as set out in the bill as reprinted by the Attorney General, be amended by striking out "financial or labour relations" in the third line and inserting in lieu thereof "or financial" and by inserting after "explicitly" in the fourth line "or labour relations information supplied to a mediator during a labour dispute by a person, group of persons or organization."

Mr. Martel: My concern is that I want to limit the information available at the time if it deals exclusively with--and I think the Attorney General talked about during the period of time of an arbitration or something that might be given, information that is confidential to an arbitrator. I am not sure why one wants to broaden the base of information, because material within a trade union movement should be no more subjected to everybody digging into their business other than for reasons during an arbitration. It seems to me this restricts it to specifically that area with labour relations as opposed to other matters. I ask that this be passed.

Hon. Mr. Scott: I am opposed to it. This is the way OPSEU recommended it in its brief. I used to be OPSEU's lawyer and I think they need a new one--

Mr. Chairman: They agreed.

Hon. Mr. Scott: What it has done here is narrowed the exception it wanted rather than broadened it. You will recall that I was in favour of providing an exclusion for labour relations information. That is what trade unions want. They do not want information that they give in confidence to be disclosed. That is why we say that if there is labour relations information applied in confidence, implicitly or explicitly, it will not be revealed.

What the mover of this has done is taken out those broad words which prevent the disclosure of labour relations information and restricted it not to all labour relations information, as it now says, but only labour relations information supplied to a mediator during a labour dispute by a person, group of persons or organization. So the section will now read, "A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial or financial information, supplied in confidence implicitly or explicitly, or labour relations information supplied to a mediator during a labour dispute by a person, group of persons or organization...."

The upshot of that is that more information given by trade unions to government officials is going to be released to the public. If that is what you want, I will not stand in your way, but I think you want the opposite. From the point of view of nondisclosure, the language in the present draft is better than in this amendment.

Mr. Chairman: Any further debate on the amendment? Are we ready for the vote?

Mr. Martel: I will remove it.

Mr. Chairman: Do you want to remove the amendment?

Mr. Martel: If that is what would happen.

Mr. Chairman: Okay.

Section 17 agreed to.

Section 18 agreed to.

On section 19:

Mr. Chairman: Mr. Morin moves that section 19 of the bill, as reprinted to show amendments proposed by the Attorney General, be struck out and the following substituted therefor:

"19. A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for crown counsel for use in giving legal advice or in contemplation of or for use in litigation."

Mr. Martel: I think I asked about this yesterday, and the Attorney General seemed very--well, I will not use the word. Are crown counsels at the federal level excluded?

Hon. Mr. Scott: I do not know the answer to that question.

Mr. McCann: Excluded under the federal legislation?

Mr. Martel: Right.

Mr. McCann: That provision is somewhere. There is a section in the federal act which talks about solicitor-client privilege as a ground of exemption. I do not know the answer at the tip of my tongue. We can give it to you if you want it.

Mr. Martel: Aside from the fact that you are trying to protect your crown counsel, I guess everything is okay.

Mr. Chairman: Is there further debate on the amendment?

Mr. O'Connor: There is another amendment to the section--

Mr. Chairman: Let us deal with this amendment first and then we will take whatever amendments you want to put.

Motion agreed to.

Mr. Chairman: Mr. Sterling moves that section 19 be deleted as amended and the following substituted therefor:

"(1) A head may refuse to disclose a record if it is of such a nature that it would be privileged from production and pending a likely legal proceedings to which the institution is or may be a party on the grounds of legal professional privilege.

"(2) A record of the kind referred to in item 19(1) is not exempt if it is used by the institution as a source of guidance or policy for the making of decisions concerning individuals."

Mr. Sterling: I will put forward the argument. I do not believe that all legal opinion which in the external world would be prepared on a solicitor-client basis should have the same kind of protection within the government environment.

The legal opinion is prepared with public funds. The first part of the amendment, 19(1), as submitted, restricts the legal opinion to cases where the opinion is being given in order for the crown to defend itself or take action. Subsection 2 refers to internal law, as it is known in the information society. In other words, if, for instance, there is a legal opinion on which a minister is refusing access to a program, then that particular internal law should be in the public forum.

I take both of these recommendations from the Williams Commission on Freedom of Information and Individual Privacy and I believe they have been inserted in other jurisdictions, not in a Canadian jurisdiction but actually in an Australian jurisdiction.

1600

Mr. Chairman: Further debate on the amendment?

Hon. Mr. Scott: We object to it. The traditional, long-understood exception is encapsulated in the words "solicitor-client privilege." Why you would muddy up the waters by trying to unpack that in subsection 1, I do not understand. Subsection 2 is absolutely dangerous, it seems to me, in the sense that it would exempt all guidelines that crown attorneys get. Am I right?

Mr. McCann points out to me that under subsection 2, you would have to disclose all the material upon which decisions to take prosecutions are based. I cannot believe that, at the request of the accused or some newspaper or any other citizen, that is a desirable exercise before the trial goes on. It is going to alter fundamentally the way we conduct our proceedings.

It seems to me the purpose of a freedom of information act is to maximize the release of information to the public that it needs or wants for its own purposes, but not to distort or alter existing systems, like prosecution systems or any other kind of system we have in government.

What you are trying to do here is to modify--and I really do not know the effect of it--the use of the words "solicitor-client privilege," which have been used from the beginning of time and which the courts have discussed in very considerable detail as to how we use the phrase that is in common use. Why do we try to explain what that means?

Mr. Sterling: Because the solicitor-client relationship relates to and can be used as a blanket exemption on too wide a category of information, and it can be used by the government to cover information which should be in the public realm. The blanket exemption of anything that would be in the solicitor-client privilege is too wide, in my opinion.

Hon. Mr. Scott: With the greatest respect, the statement that it is used too broadly just is not made out. The courts interpret this phrase "solicitor-client privilege" all the time, decide what is protected by it and what is not protected by it and do it really quite efficiently and to a very high degree of satisfaction. I cannot think of a single case--you may have an example--where a court has decided solicitor-client privilege in a way that offends me. There may be such a case, but I think, by and large, the public is satisfied with the kind of interpretations the court has been making on that subject.

I would be inclined to use the words the courts themselves use, instead of trying to devise a new distinction, new language, to encapsulate a concept that is very old. As far as I can do it, that takes care of subsection 1.

Subsection 2, if I understand what it is designed to do, I think is positively damaging to the criminal justice system in the sense that it would permit that material to be released. Let us be perfectly frank. Among the people who are going to ask for this information are accused persons--they have an absolute right to, and why should they not--and their lawyers. I cannot believe subsection 2 serves any public interest at all, if I understand it right.

Mr. Sterling: But would the example you bring forward not be exempted under the law enforcement sections totally?

Hon. Mr. Scott: No.

Mr. Sterling: If you are prosecuting, that is not law enforcement information?

Hon. Mr. Scott: No. What we are trying to deal with here is our concern, which I think is shared by everybody, that public servants and governments that are being sued or that are prosecuting cases can do that effectively and fairly only if they can get the best legal advice. The way they get the best legal advice is exactly the same way the Globe and Mail or any individual citizen gets the best legal advice: by going to a lawyer and saying very candidly to the lawyer, "I would not whisper this outside the door, but here are the facts and I would like your opinion so I will know whether to defend myself or not."

The policy of the law has always been to protect that conversation, because if you do not protect that conversation, the person going to the lawyer will be reluctant to tell the lawyer the truth. He will tell the lawyer something made up to protect himself, not the truth. If you do not tell your own lawyer the truth, you are never going to get the system working properly.

From the beginning of time, we have protected that conversation between

the lawyer and his client. We regard it in a public sense as more important than between a patient and his psychiatrist because the system will not work without it. That is called solicitor-client privilege. We have 200 years' experience with what that means.

Mr. Sterling: I know what it means.

Hon. Mr. Scott: You do not want to use that phrase. You want to create a new phrase so we can begin interpreting that series of cases all over again.

Mr. Sterling: Professional privilege relates to the solicitor-client relationship, and if you want to write that in, what I am talking about is--

Hon. Mr. Scott: Your section 19 does not use the phrase "solicitor-client."

Mr. Sterling: How would you interpret "grounds of legal professional privilege"?

Hon. Mr. Scott: I have not the faintest idea. I would like to use the expression "solicitor-client privilege" which has developed over the generations in the law a very precise meaning.

Mr. Sterling: I will put "solicitor-client privilege" in lieu of "legal professional privilege," if those are the words you would like. The problem is that solicitor-client privilege should be available to the crown, as it is to the public, when in fact that information is being divulged for the purposes of a pending legal action. I have no problem with that.

Hon. Mr. Scott: Your section 19 is not available to the crown at all, to begin with. If you use legal professional privilege or solicitor-client privilege or are connoting a privilege that attaches to and is owned by a client, then you have not included the crown attorneys, because they do not have clients.

Mr. Sterling: That was a late amendment by yourself and perhaps the amendment should be cleaned up for that. But that is not the thrust of the amendment, as you know. The thrust of the amendment is to limit your privilege to cases where there is legal action taking place, and you cannot use, for instance, a legal opinion that is floating around out there, which is used for making decisions as to who from the public is eligible for a government program or who is not.

Hon. Mr. Scott: That would not be protected by a solicitor-client privilege to begin with if it is eligibility for a program. Solicitor-client privilege, you will understand, protects more than court procedures. It protects you if you go to a lawyer and tell him all your secrets because you want to make a will. It does not protect a policy decision made about whether a program should apply to X or Y. It protects information that you give or the government gives to its lawyers in order to get an opinion about whether it should sue or defend the lawsuit.

Mr. Sterling: That is one half of it. The other half is that it is a solicitor's opinion.

Hon. Mr. Scott: Right.

Mr. Sterling: What I am after is the solicitor's opinion as to what should be allowed or what should not be allowed under a particular program.

Mr. Chairman: Both sides of the argument have been put out. Is there any further debate on the matter?

Mr. Martel: Can we get a legal opinion?

Mr. Chairman: Are we ready for the vote? All those in favour of the amendment? All those opposed?

Motion negatived.

Section 19, as amended, agreed to.

Mr. Chairman: You can see the light at the end of the tunnel. I would like to get through to the end of the next section, if that is possible, or the next category, and maybe stop at the access procedure if that is a reasonable target.

1610

Section 20 agreed to.

On section 21:

Mr. Chairman: Mr. Martel moves that clause 21(3)(h) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by inserting after "origin" in the first line "sexual orientation."

Hon. Mr. Scott: I have no objection to that, and I think perhaps it was done on consent, although it is subject to the committee.

Mr. Chairman: We are agreed with that one, I believe. Those in favour of that amendment?

Motion agreed to.

Hon. Mr. Scott: In fairness to the committee, I should say there was another sexual orientation amendment that was to be made in the personal privacy section, and I do not think it was moved in the definition section. I have no objection to returning to it if you want to move it, because you are going to be in trouble you know where if you leave it out.

Mr. Chairman: If the committee agrees, we could deal with that when we deal with the other matters that have been stood down.

Section 21, as amended, agreed to.

Section 22 agreed to.

Mr. Chairman: The next section is section 24.

Mr. O'Connor: I thought we were going to stop.

Mr. Chairman: The reason I am prepared to take a few more is that perhaps we can go until about 4:30 and I do not have any amendments to the next two or three. At least, I am not aware of any. I do not believe there are. Perhaps we can just carry those.

Mr. McCann: I might interject to explain that the reason section 23 does not appear in the numbering of the bill is that the severability provision was moved to subsection 10(2). It was thought to be more appropriate to have it up front there, and that means section 23 drops out. The content is still in the bill; the section number is gone.

Mr. Martel: Are you going to renumber the whole bill?

Mr. McCann: Yes, that will have to be done at the end.

Sections 24 and 25 agreed to.

Mr. Chairman: Any amendments to section 26? Carried.

Mr. Sterling: Hold it. This is into the time periods?

Mr. Chairman: Yes.

Mr. Sterling: Are we going to do all the time periods now? Did you not have an amendment to 26?

Mr. Warner: Not any more.

Mr. Chairman: The indication earlier was that the amendment would not carry, so they have chosen not to put it.

Section 26 agreed to.

On section 27:

Mr. Chairman: Mr. Morin moves that subsection 27(1) of the bill, as reprinted to show the amendments proposed by the Attorney General, be amended by striking out "subsection 25(1) or (2) or" in the first and second lines.

Hon. Mr. Scott: Let me explain something.

Mr. Chairman: You had agreed to this previously.

Hon. Mr. Scott: What we explained was that you are taking this out to make plain that the only extension that can be granted is an extension under section 26 for 30 days for responding to the request, and it is really to make what was intended clear.

Mr. Chairman: All right. Any further debate on it?

Mr. O'Connor: I have a question. Perhaps you can clarify this, Mr. Chairman. When we were discussing section 45, which includes a series of references to numbered sections, you indicated that to delete one or two or three of those numbers was out of order and that the way to do that was to vote against it. Should we not be doing the same thing here?

Mr. Chairman: They are striking out particular words in here.

Mr. O'Connor: That is what we suggested under section 45, and you thought that was improper procedure. I take it when we get to section 45, we can then move to delete sections 17, 18 and 19 and you will not declare us out of order.

Mr. Chairman: You can vote against those sections, or I will allow you to move a deletion motion. It is just a way of spreading it; we can do it either way.

Mr. O'Connor: As long as we proceed in the same manner as we are here and it is not considered to be improper.

Mr. Chairman: I am sure you will get on my tail if I do not.

Mr. O'Connor: Thank you, Mr. Chairman.

Motion agreed to.

Mr. Chairman: Mr. Sterling moves that subsection 27(1) of the bill, as amended, be amended by striking out the words "that is reasonable in the circumstances" after the word "time" and substituting therefor "not to exceed 45 days."

Hon. Mr. Scott: We argued this yesterday. Bearing in mind that you may be looking for documents that were printed in the last century, it was my proposition that we should allow one extension that is reasonable in the circumstances; an appeal can be taken to the commissioner as to whether it is reasonable in the circumstances. But what are you going to do if the information cannot be produced in 45 days? Are you going to hang the head?

Mr. O'Connor: "Or reasonable in the circumstances."

Hon. Mr. Scott: You are taking out "reasonable in the circumstances."

Mr. O'Connor: My point is that if the words "reasonable in the circumstances" are left in and the commissioner does not meet that criterion, you have the same problem of enforcement or censure as you do when there is a 45-day limit.

Hon. Mr. Scott: Not at all, because if the time fixed is reasonable in the circumstances, which is what the commissioner will decide, presumably the failure to meet that standard means the head has misconducted himself.

Mr. O'Connor: And what do you do?

Hon. Mr. Scott: It may not be much of a penalty, but the commissioner makes a statement in his annual report that the Attorney General has persistently failed to respond in times that are limited reasonably in the circumstances; he is dragging his feet. Then the Legislature takes the initiative of reducing my salary in estimates to \$1 or something.

Mr. Chairman: Or we could simply shoot him and put him out of his misery. That is another option.

Hon. Mr. Scott: Right; that is true.

Mr. O'Connor: Why cannot the same censure be applied to a 45-day limit?

Hon. Mr. Scott: If you say there is a 45-day limit and I fail to meet the 45-day limit, it may be perfectly reasonable to fail to meet it, depending on what the document is. You have to understand that people will be applying for documents that we can produce in two days. There will also be

people, such as PhD enthusiasts, who will be applying for documents that will take hundreds of days to produce.

Mr. O'Connor: It is just that the words "reasonable in the circumstances" are nebulous. They are subject to several interpretations; they are not fixed. To fix the term is understandable by people in the public, and it is a goal which would be attempted to be met, I presume, by most heads.

Hon. Mr. Scott: The thing about "reasonable in the circumstances" is that the commissioner will be able to say: "Look, Mr. Scott, all they are asking for is a document that was filed in your office in the last six months. I am only going to give you 30 days to find that." Or he can say: "Look, Mr. Scott, I know they are asking for all the original correspondence of Edward Blake from the last century. I am going to give you six months to find that." But if he says, "I am sorry, Mr. Scott, I cannot give you any more than 45 days," I would have to say, "Look, I cannot even find the files in 45 days."

Mr. Martel: Let alone the tape.

Hon. Mr. Scott: Yes, right.

Interjections.

1620

Mr. Chairman: I would like us to deal with this amendment. We are getting close to adjournment time.

Mr. Martel: Mr. O'Connor throws in "45 days or whatever is reasonable," but that is not what the amendment says.

Mr. O'Connor: No. I am taking out "whatever is reasonable" and substituting "45 days"--I am not; Mr. Sterling is.

Mr. Martel: I understand what--

Hon. Mr. Scott: He is taking out "what is reasonable" and throwing in "45 days."

Mr. Chairman: One at a time. Mr. Sterling.

Mr. Sterling: The practical effect of the amendment is to put some kind of limitation on the bureaucrats as to how long they will have. If there is an extension of 45 days, that gives the bureaucracy 75 days to produce a document.

Hon. Mr. Scott: Or a thousand documents.

Mr. Sterling: Or a thousand documents. If the situation arises where there is a longer period of time required, I would venture to say that most people who would be requesting that information--in fact, I would say 99 per cent of them--would say, "Look, you do not have to live by the 45 days, you do not have to live by the 75 days; just produce the information." But if we do not have any time in here, what we do is we do not put any time frame on the bureaucracy to work within. There is very little censure in terms of involving a civil servant who does not work to a time limit. If you do not have something in definite terms, you are going to get a situation where you get an extension and where you get the same treatment as we have received in the Legislature in answering written questions; there is no time limit on those.

Mr. Scott: We know who wrote the book on that.

Mr. Chairman: No interjections here.

Mr. Sterling: I am stating that when you do not have a time limit in terms that are easily understood, there is no reaction.

Mr. Warner: I appreciate what my friend is saying. He is now becoming sensitized to the frustrations that opposition members felt when the Conservatives were in power.

What I see in this section is a balance. Where it says "reasonable in the circumstances" in subsection 1 is balanced with subsection 2, where the head, when extending the time limit, has to give notice setting out the length and the reason and that you can appeal to the commissioner; if you think the extension is unreasonable, then that would be reviewed by the commissioner. It seems to me that is a reasonable balance.

Mr. Sterling: My concern is that an appeal process dealing with an extension of a time limit is not an adequate answer to someone who wants that information in a timely manner.

Motion negatived.

Mr. Chairman: We are nearing 4:30. Shall section 27 carry?

Mr. Warner: Do we have time to go back to section 2 and tidy up the definition of sexual orientation, which we left out of clause 2(1)(a)?

Mr. Chairman: Is it generally agreed that we want to wrap up by 4:30 this afternoon? Okay.

We had a suggestion, and we appear to have consent, to go back to an insertion in section 2--

Mr. Warner: Clause 2(1)(a).

Mr. Chairman: Perhaps you would help me by putting that on the table. Do we have agreement to revert to that, for starters?

Agreed to.

Mr. Chairman: Mr. Warner moves that clause (a) in the definition of "personal information" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by inserting after "sex" in the second line, "sexual orientation."

Motion agreed to.

Mr. Chairman: That amendment carried 2-0.

Mr. Martel, did you have something you wanted read into the record this afternoon?

Mr. Martel: Yes. I want this--

Mr. Chairman: Perhaps you would hand it to the clerk.

Hon. Mr. Scott: This is a letter from the Minister of Health (Mr. Elston) to me, dated March 31, 1987, giving his undertaking with respect to appropriate amendments to the Public Hospitals Act. Mr. Martel has seen the original of the letter. I ask that the letter be introduced as an exhibit before the committee. There is a pencilled notation in which Mr. Elston said he hopes to move on that in the next session.

Mr. Chairman: We will simply table that and circulate it for committee members tomorrow.

Mr. Martel: We will withdraw our hospital amendment.

Mr. Chairman: You will withdraw your hospital amendment. Is there any further business?

Mr. O'Connor: I move we adjourn.

Mr. Chairman: Okay; so we are adjourned until 10 tomorrow morning.

Hon. Mr. Scott: Mr. Chairman, cabinet is tomorrow morning. Could I ask if we could meet at 11 and then I will try to get out?

Mr. Chairman: It is agreeable to me.

Hon. Mr. Scott: I think I might be free by 11.

Mr. Chairman: Okay. We will sit again tomorrow at 11. Thank you very much.

The committee adjourned at 4:26 p.m.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, APRIL 1, 1987

Morning Sitting



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Poirier, J. (Prescott-Russell L) for Mr. Newman

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, April 1, 1987

The committee met at 11:09 a.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: We have a quorum.

Hon. Mr. Scott: Could I begin by tabling the schedules? The schedules, as the committee will know, are Management Board's division of agencies, boards and commissions on the basis of function and authority. We have indicated that we will designate for the purposes of the Freedom of Information and Protection of Privacy Act schedule 1 and 2 agencies plus the Workers' Compensation Board. You will be able to see from looking at this, which will be circulated, precisely which those are.

I also indicated to Mr. Warner yesterday that we would sit down with him and anybody else who is interested and look at the schedule 3 agencies to determine which of those are appropriate for designation under the act, and I will undertake to be guided by that consideration. It does not require an amendment. It is just a process I would be happy to engage in with all members of the committee, especially Mr. O'Connor, as I want to illustrate today my eagerness to get along with him.

Mr. Warner: You are not eager to get along with me?

Hon. Mr. Scott: I think I have something going with you, Mr. Warner. It is Mr. O'Connor who is causing me real concern today.

Mr. Warner: Can I ask when?

Hon. Mr. Scott: When what?

Mr. Warner: When we are going to do this.

Hon. Mr. Scott: The designations will be made by regulation. I will be happy to sit down with you at any time. Frankly, I am very open on the subject of designation, and it seems to me any agency that reasonably has information the public might want should be designated.

Mr. Martel: Can I ask a question at this time? I hear what the Attorney General (Mr. Scott) is saying, but what worries me about it is, what does subsection 60(3) do? Subsection 60(2) says, "This act prevails over a confidentiality provision in any other act unless the other act specifically provides otherwise." Then subsection 60(3) says, "Subsection 2 shall not have effect until two years after this section comes into force."

Hon. Mr. Scott: We will be coming to that. It has to do with confidentiality provisions which are now found in a wide range of statutes. How many?

Mr. McCann: I do not have the number. It is in the neighbourhood of 100.

Hon. Mr. Scott: A hundred statutes have confidentiality provisions. The question is, will they fall in the face of the freedom of information act provisions or not? The idea is that they should fall--that is to say, all those acts should go out the window in the face of freedom of information--but what we have built into this is a two-year time frame for that to happen, so that this committee will be able to assess each of those acts.

Mr. Martel: I raise it at this time because you are presenting schedules 1, 2 and 3 for us to look at. I do not know which institutions in which categories fall under which acts. The Workers' Compensation Board, as I understand it, is schedule 3, for example.

Hon. Mr. Scott: It is a different problem, I think. What we are looking at in the schedule are the agencies, boards and commissions that will come within the act by designation, and we have discussed schedules 1, 2 and 3.

Mr. Chairman: Can I suggest it might be advisable to take a little time, perhaps over the noon hour, and go over the documents tabled by the Attorney General this morning? When we get to that section of the act, then perhaps we can have an informed discussion.

Mr. Martel: But we do not know the acts; that is my concern at this time.

Mr. Chairman: I am suggesting that he will give the acts.

Hon. Mr. Scott: The Occupational Health and Safety Act is an example of an act that has confidentiality provisions.

Mr. McCann: We can provide the committee with a list. We cannot guarantee it is absolutely up to date as of this time, but it is a pretty accurate list of acts that have confidentiality provisions.

Mr. Martel: Okay.

Mr. Chairman: We had completed a slight amendment to section 2, so I think we are in a position to carry that section now. Shall section 2 carry?

Section 2 agreed to.

Mr. Chairman: The next intervention should be to wish Maurice Bossy a happy 58th birthday today. Anybody who survives 58 years on this planet deserves some recognition. Bossy, that is all you are going to get for the whole day until you get home, and then I know--

Mr. Bossy: I have been fooling around all my life.

Mr. Chairman: I am not going to touch that, but I will send a copy of Hansard down to Chatham.

Mr. Bossy: It is April Fool's Day.

Mr. Chairman: April Fool, I know.

Mr. Morin: Mr. Chairman, perhaps we could ask David Warner to sing in Spanish.

Mr. Chairman: No.

Mr. Warner: Why not?

On section 28:

Mr. Chairman: I think we are ready to proceed. This morning we can begin with section 28 of the bill. I am going to call for any amendments to that section.

Just for your own edification, as we went through the rough tabling of amendments, I made little notations in my own book about what apparently had agreement among all three parties and what did not. If I see one where there is apparent agreement, I will point that out to you, but if there was not apparent agreement, then I would leave it up to the critics to move their amendments.

Are there any amendments to section 28? I do not have a notation on it. Shall section 28 carry?

Section 28 agreed to.

On section 29:

Mr. Chairman: Are there any amendments to section 29 that anyone wishes to place? Shall section 29 carry?

Mr. Sterling: Can I ask the Attorney General a question?

Mr. Chairman: Yes.

Mr. Sterling: Under this access procedure, will it be necessary that the requester put his application in the form of a regulation under the act? If somebody writes to a minister, for instance, "I would like such-and-such a report," and there is a fight over it, is that deemed to be from the date he receives the letter or whatever?

Hon. Mr. Scott: The only requirement, as I understand it and that is intended, is that the request for information be in writing. We are going to provide assistance to people who are not used to making written requests, but there is no level of complexity or detail that is required. You can imagine that there may be problems about identification of the document. If the applicant is unable to identify the document with any precision, we are going to have to give him help in doing that; but having said that, there is no restriction.

Mr. Sterling: Is a question in the order paper a request under this act?

Hon. Mr. Scott: No. I think a request in the order paper is not, though it could easily be translated into a request. If you sent your request in the order paper around to the minister and say, "I am making this request under the freedom of information act," it seems to me you have done the job.

Mr. Sterling: I do not know what other members of the committee feel, but I think it would be advantageous for members of the Legislature to have a clause in the act to make it automatically a request under the act.

Hon. Mr. Scott: I do not think a member of the Legislature needs that. He can make a freedom of information request just like this, by a letter saying, "I am making this request under the freedom of information act." There probably will be a form to fill in and if he prefers to do that, rather than place an order paper question, there is no reason why he should not do it.

Mr. Chairman: The only caution I would put on is that there would be a small procedural problem. You would be dragging the Speaker into an argument here. I am not sure it would be in order to put an amendment of this kind and I would not want to be the Speaker who got caught on the hooks of someone who said: "Today, I want it as a written question on the order paper. It is clearly under your jurisdiction. You give me a ruling." The next day you say, "It might have been on the order paper yesterday, but today I want it considered under the freedom of information act and I want you to tell me that the Attorney General is a bad person."

It seems to me that, of all the people in Ontario who could actually live with a small dichotomy of a written question or a written request under this act, the members of the Legislature surely should have enough common sense to be able to handle that. If you wanted to make an application under the act, send them a copy of your written question, and say, "Under the freedom of information act, I want a reply to that."

Mr. Sterling: I guess the only reason that I would like it to be assumed once it is on the order paper is--because, basically, the question goes to the ministry.

Mr. Chairman: There is no argument about that.

Mr. Sterling: The fact of the matter is that we now have no time limitations on a minister in terms of his response, or any kind of requirement that he live within a certain period of time.

Mr. Chairman: So the astute member will send his written question to the minister in a letter.

Mr. Sterling: Why do we have to do that? Why go through that process? Why not just make it an assumption?

Hon. Mr. Scott: I think there is another difference. The freedom of information act, by and large--and leaving aside computer printouts for the moment--is going to respond to the provision of records and documents that exist. An order paper question quite often goes beyond the request for a record that exists and it invites the minister to make a record by doing certain research. That, therefore, means a member of the Legislature has a capacity to make a request to the minister that an ordinary citizen under the freedom of information act may not.

Mr. Chairman: Shall section 29 carry?

Mr. O'Connor: Is that not a problem that exists with regard to nearly every request under this act?

Hon. Mr. Scott: Yes.

Mr. O'Connor: The records are not always going to exist in the form that the applicant wants them. There is going to have to be some research to compile documents, numbers and figures similar to the order paper.

Hon. Mr. Scott: Yes.

Mr. O'Connor: I will tell you what we will be doing, I presume. Each and every order paper question is going to say, "Please consider this to be an application under the freedom of information act."

Hon. Mr. Scott: That is fair enough.

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Mr. O'Connor: Why not do it automatically?

Hon. Mr. Scott: For example, the question, "How many times did you drive your automobile to Orillia?" which looks like a request to do some counting or some mechanical work is, in fact, a record question, because it says, "What records have you that disclose trips to Orillia?" In 95 per cent of the cases, there is going to be no problem.

Section 29 agreed to.

On section 30:

Mr. Chairman: I believe there is an amendment that had agreement here.

Mr. Warner moves that section 30 of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

"(3) Where a person examines a record or a part thereof and wishes to have portions of it copied, the person shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature."

Motion agreed to.

Section 30, as amended, agreed to.

Hon. Mr. Scott: Mr. Chairman, they are here to call me to the standing committee on administration of justice.

Mr. Chairman: Is it necessary that we stop?

Hon. Mr. Scott: It is not necessary as far as I am concerned. I have to go to the justice committee to move something in the pay equity bill but you can carry on as far as I am concerned.

On section 31:

Mr. Chairman: I believe we had an agreement here.

Mr. O'Connor moves that section 31 of the bill be amended by adding thereto the following clause:

"(aa) the name and office of the head of the institution."

Mr. O'Connor: I believe it was agreed that could be inserted.

Mr. Chairman: Any further debate on that amendment?

Mr. Warner: The only note I have here is that it might also be put into section 32, or in section 32 instead of section 31.

Mr. Chairman: Let us deal with section 31 before we deal with section 32.

Mr. Warner: I just want to know which is the choice.

Mr. Chairman: Section 31 is the choice.

Mr. Warner: Is that what Mr. O'Connor says? He prefers it to be in section 31 rather than section 32?

Mr. Chairman: That is where he moved it.

Mr. McCann: Could we just point out, since we have moved or appear to be moving, if section 32 carries, to a single directory which would cover all institutions, that information will already be contained in clause 32(c) so it may not be necessary to have it in section 31.

Mr. O'Connor: It is a simple piece of information. I do not think it will hurt.

Motion agreed to.

Section 31, as amended, agreed to.

Sections 32 and 33, inclusive, agreed to.

On section 34:

Mr. Chairman: I believe there was agreement on one item there.

Mr. Warner: Subsection 34a(1) is where I have a notation of an agreement.

Mr. Chairman: Mr. Warner moves that subsection 34a(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "to the public" in the third line and inserting in lieu thereof "for inspection and copying by the public."

Mr. McCann: The Attorney General has no problem with that.

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 34?

Mr. Warner: There is a motion that I believe you have in your book. Before I move it, I wonder if the government spokesmen could refresh my memory as to why they were opposed to it.

Mr. McCann: Which one are you referring to?

Mr. Warner: Clause 34(2)(ca).

Mr. McCann: I do not think we--

Mr. Chairman: I do not have ready access to that. Tell me what the amendment is.

Mr. Warner: It should be right in front of the one we just passed.

Mr. Chairman: Okay.

Mr. McCann: What the amendment would do, if I understand it, is it would add a requirement that in the head's annual report to the commissioner, there be an indication of the number of uses of personal information contained in each personal information bank and the number of uses or purposes and so forth.

We do not have any problem with the section from "and the number of uses" on. The problem with the earlier part is that indicating the number of uses is practically impossible. There is no way an institution is going to be able to tell how many uses of personal information contained in each bank it has made in a year. It is not something that could be very precisely calculated.

We would prefer if the amendment were only the second half, which is "uses or purposes for which the information is disclosed where" it "is not included in the statements of uses and purposes" in clauses 41(1)(d) and (e).

Section 41 says that in the directory of personal information banks, you have to set out all the typical uses that will be made of a personal information bank, and then there is a procedure for keeping track of nontypical uses. The nontypical uses do not create a problem in terms of numbering, because you have to keep track of them in any event, but the routine, consistent uses that the act allows you to make would be very difficult to calculate.

Mr. Warner: I will accept that.

Mr. Chairman: Mr. Warner moves that subsection 34(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following clause:

"(ca) the number of uses or purposes for which the information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 41(1)(d) and (e)."

Mr. Chairman: Okay. We have had a slight alteration in the wording of that amendment. Do we all understand the amendment? Any further debate on it?

Motion agreed to.

Section 34, as amended, agreed to.

Sections 34a, 34b, 34c and 35, inclusive, agreed to.

On section 36:

Mr. Chairman: Mr. Morin moves that subsection 36(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following clause:

"(da) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service."

Any debate on the amendment?

Motion agreed to.

Mr. Chairman: The amendment carries 1-0. If you are here and you want to get a per diem, stick up your hand once in a while.

Any further amendments to section 36? Shall section 36, as amended, carry?

Interjection: Carried.

Mr. Warner: No, no.

Mr. Chairman: Okay. Are there amendments to section 37?

Mr. Warner: Whoa. Let us stop the freight train for a minute. On clause 36(1)(f)--

Mr. Chairman: I did call for amendments three times. Do you want to move 36(1)(f)?

Mr. Warner: You will have an amendment in your book.

Mr. Chairman: You are wasting time. This one did not carry in the first runthrough. If you want to put it, put it.

Mr. Warner: The other two were against it? You were against this one?

Mr. O'Connor: Yes.

Mr. Warner: On 36(1)(f), changing it to "investigation"?

Mr. O'Connor: We were against it.

Mr. Warner: You were against it? Forget it.

Mr. Chairman: After all those vile accusations against the chair, you chickened out and withdrew.

Mr. Warner: I do not make disparaging remarks against freight trains.

Section 36, as amended, agreed to.

1130

On section 37:

Mr. Chairman: Mr. Morin moves that subsection 37(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "a public" in the first line and inserting in lieu thereof "an."

Interjection: Carried.

Mr. Chairman: Do not rush the chair. Is there any debate on this one?

Those in favour of the amendment?

Any opposed?

You are all going to get paid today.

Motion agreed to.

Mr. Chairman: Any further amendments to section 37?

Mr. Warner: Yes. Having said that, I will find one.

Mr. Chairman: You seem actually wide awake this morning.

Mr. Warner: My notation here is that the Conservatives had an interest in the general amendment but were seeking a slightly different wording.

Mr. Chairman: Mr. Warner moves that subsection 37(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "reasonably" in the third line.

Mr. McCann: When we discussed this the other day, the Attorney General was sympathetic to the notion of making the section read something like "The head of a public institution shall take reasonable steps to ensure that" and then leaving out the word "reasonably." Perhaps we could stand this down for a few minutes and we could work up a suitable amendment with legislative counsel.

Mr. Chairman: Is that agreed?

Mr. Warner: That is agreed.

Mr. Chairman: Okay. We will stand down subsection 37(2) for a rewording. Are there any further amendments to section 37? Okay.

Section 38 agreed to.

On section 39:

Mr. Chairman: There were a number of amendments tabled on section 39, but there was no agreement on any them, to my recollection.

Mr. Warner: Not the one--

Mr. Chairman: None of them.

Mr. Warner: Is this the main change? I do not have a name on that one.

Mr. Chairman: I have no record of an agreement among the three parties to support any amendments on section 39.

Mr. Warner moves that clause 39(1)(c) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "agreement or arrangement" in the third line and inserting in lieu thereof "or written agreement."

Mr. McCann: This is a fairly fundamental matter. Maybe we had better wait until the Attorney General comes back. I do not think I can claim to represent the minister on this issue. He had better be here for the discussion.

Mr. Chairman: I am in the hands of the committee; tell me what your pleasure is. We can stand this section down if you like. I will reiterate that in our first runthrough of the amendments, this did not have the support of the majority of the committee.

Mr. Warner: There appear now to be some second thoughts on behalf of my new-found friends here.

Mr. O'Connor: That is unfair. We never have second thoughts. We like the amendment as it is proposed and would therefore consider voting for it and supporting it. I do not know that we need delay it for any purpose.

Mr. Morin: Could we delay it?

Interjection: Shall we set it aside?

Mr. Chairman: We are in committee and if there is a request to stand down a section, we normally adhere to that.

Mr. Sterling: Mr. Chairman, I do not believe that when you made the assumption that we were against something that was necessarily so in all the cases; when we did not express a very positive response sometimes, that meant we were listening to the arguments and implied that perhaps we had further debate on it.

Mr. Chairman: We will stand down the proposed amendment on 39(1)(c). We have had a request to stand down 39(1)(c).

Mr. O'Connor: Why are you standing it down?

Mr. Martel: So the Attorney General can come back.

Mr. Chairman: We have had a request to stand down 39(1)(c).

Mr. Martel: Mr. Chairman--

Mr. Chairman: Hold on for a second. You are rushing the chair.

I point out to you now, for your own little records, we are standing down two items, subsection 37(2) and clause 39(1)(c).

Mr. Martel moves that subsection 39(1) of the bill be amended by adding thereto the following clause:

"(ha) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the next of kin or legal representative of the employee."

Mr. Martel: Simply put, the union should be among that list of people since it is provided with an opportunity to obtain information that frequently might be needed in efforts to assist someone within the bargaining unit who might have been injured on the job; there are any number of ways they might be able to assist. I think it is imperative that they be included.

For example, it is only in the last 10 or 12 years that unions could have standing at an inquest. There was a great fight just to allow them to have standing at an inquest to represent a colleague who had been killed. The same sort of thing prevails here. If they represent the worker in things related to the place of work and so on, they should be empowered to be among the list of people who can work on behalf of someone. Therefore, I hope the government accepts this one.

Mr. O'Connor: May I ask why the information sought would not be included under clause 39(1)(aa), for instance? Could the person himself not ask for that information?

Mr. Martel: What if he is incapacitated?

Mr. O'Connor: If he is incapacitated, then you go to clause 39(1)(g), where his next of kin or personal representative may ask.

Mr. Martel: But "next of kin" or "friend" is not necessarily his union.

Mr. O'Connor: My point is, where the person has the right to get it himself--and in most cases he will not be so incapacitated that he cannot ask for information--why does he not make the request?

Mr. Martel: He might be dead.

Mr. O'Connor: If he is dead, then you go to clause 39(1)(g) and his next of kin can ask for it.

Mr. Martel: I just want the bargaining agent to do it for him.

Mr. O'Connor: I am not trying to deny the bargaining agent the material he might need. It just seems excessive where that information can already be obtained by either the person personally or his next of kin or his personal representative. Am I correct on that?

Mr. McCann: Yes. I think the Attorney General's point was the same as Mr. O'Connor's, but I do not think the government opposes the amendment particularly.

Mr. Morin: No, it does not.

Mr. O'Connor: I was only asking a question. I am not arguing against it.

Mr. Martel: I just think it clarifies it and prevents any hassles.

Motion agreed to.

Mr. Morin: Could we go back to subsection 37(2)?

Mr. Chairman: Yes. First of all, are there any further amendments to section 39? We have one that we have stood down, so perhaps we could now deal with clause 39(1)(c).

Mr. Warner moves that clause 39(1)(c) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "agreement or arrangement" in the third line and inserting in lieu thereof "or written agreement."

Hon. Mr. Scott: This amendment is not satisfactory to the government. It is not my proposal to indicate at this stage what amendments, if made and accepted, might lead to the bill not being pursued further. I have made no judgement about that. But I want to make it as clear as I can that this proposed amendment has the most serious ramifications imaginable for law enforcement in Ontario. I am prepared to invite the assistant deputy minister, criminal law, to attend before the committee, although that would be unusual, in order to make this point. The best information we have is that if a written agreement is required, there is no metropolitan or state police department in the United States that will share police information with law enforcement agencies in Ontario. Frankly, we regard that as a major inhibition that will have consequences of the most important type for law enforcement.

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As the committee will well understand, the law enforcement provision details not only the investigation and prosecution of cases, but what we generally call policing, which is the business of keeping tabs on people who are going to assault our politicians or cause trouble in our communities. The heart of that exercise is an exchange of information. The general rule is that agencies we provide information to will, in turn, provide information to us. We would like to have written agreements in every case, because we are not uncomfortable with a written agreement for our own part.

What we face is the reality that, for their own reasons and perhaps because of their own domestic concerns, American police agencies will not enter into written agreements. Therefore, the use of the word "arrangement" has been taken. I can assure the committee that if written agreements are required, those police forces will not make information available to Ontario law enforcement agencies and the government would have to give consideration to the bill.

Mr. Warner: Maybe I am missing something. Clause 39(1)(d) is the one that deals with law enforcement agencies. The amendment I placed was to clause 39(1)(c), which deals with an act of the Legislature, an act of Parliament or a treaty.

Mr. Chairman: "Agreement or arrangement thereunder." If I could help for a moment, this is a rather broad classification here, which means any way you get the information, essentially. The Attorney General is pointing out that some of the people they get information from would have difficulty--

Mr. Warner: I understand that and I appreciate what he is saying. I understood the argument he just made applies to clause 39(1)(d) dealing with law enforcement. The amendment I was placing deals with clause 39(1)(c).

Hon. Mr. Scott: It also applies to clause 39(1)(c).

Mr. Warner: I did not read clause 39(1)(c) as having a direct connection with law enforcement.

Hon. Mr. Scott: I think it does.

Mr. Chairman: Do you want your amendment to stand?

Mr. Warner: I would like a little bit more clarification.

Hon. Mr. Scott: My understanding is that it does. That is what I am

told. I agree that the major and most pronounced impact is going to be with respect to clause 39(1)(d).

Mr. Martel: We did not move that.

Hon. Mr. Scott: But I think it is going to be with respect to clause 39(1)(c) as well.

Mr. Martel: I should tell the Attorney General, we did not move clause 39(1)(d).

Mr. Chairman: Is the amendment still before us or not? If it is, I have speakers who want to speak to it.

Mr. Warner: I would appreciate hearing from other members.

Mr. O'Connor: I am in the same conundrum as Mr. Warner. It seems to me that clause 39(1)(e), which is a very broadly written clause, totally covers the exchange of law enforcement information between police departments and agencies here and in foreign countries. It is so broadly written, it includes information that aids in an investigation or from which a law enforcement proceeding is likely to result. It even includes casual information, it would seem, that does not necessarily relate to a specific investigation, such as exchange of driver's licence information and so forth. The amending of clause 39(1)(c) in no way affects that free flow of police information, which the Attorney General quite rightly wishes to protect.

Hon. Mr. Scott: If I could respond to that, clause 39(1)(e) as we read it relates only to the exchange of information within Canada. Secondly, it relates only to an exchange of information to aid an investigation, with a view to a law enforcement proceeding. That is not what the collection of much information is about.

Mr. O'Connor: No. If you read clause 39(1)(e), it includes "where disclosure is to an institution or a law enforcement agency in Canada." It does not say from where. From anywhere, I presume; from outside Canada. If you wish, we will put the words in there.

Hon. Mr. Scott: No, but the opening words of section 39 are, "An institution shall not disclose personal information in its custody or under its control except...(e) where disclosure is to an institution or law enforcement agency in Canada." Under the opening words, we cannot disclose except to an institution in Canada, so the effect of clause (e) is within Canada only.

Mr. O'Connor: If that is what we are trying to do, to protect the free flow of law enforcement information, police information, let us say that. But let us do what we are trying to do under clause 39(1)(c), which is to provide for written agreements, and get away from the sort of generalized agreements which would enable government to hide behind a whole range of so-called arrangements or agreements between themselves.

Hon. Mr. Scott: Let us be perfectly clear that clause 39(1)(e) relates to disclosures within Canada; clause (d) relates to disclosures outside Canada--that is, disclosures to the United States; and clause (c) deals with disclosures "for the purpose of complying with an act of the Legislature or an act of Parliament or a treaty, agreement or arrangement thereunder."

Mr. O'Connor: If we amend it in the manner we are suggesting, and give it some time and perhaps go on to say, "except for information relating to law enforcement matters or matters from which a law enforcement proceeding is likely result," that is exactly what you want to say.

Hon. Mr. Scott: First, we were told that an amendment would be made with respect to clause 39(1)(d).

Mr. Martel: Yes, but you jumped the gun. It has not been moved.

Hon. Mr. Scott: No.

Mr. Martel: You went on for five minutes on something that was not even moved.

Hon. Mr. Scott: The same thing applies to clause 39(1)(c). The point I have made is that because clause (d) is broader than (c), the implications of the amendment for (d) are going to be greater than they are for (c).

Mr. Martel: We have no intention of moving clause 39(1)(d).

Hon. Mr. Scott: I have been told that members of the committee, other than the New Democratic Party, proposed to make the similar amendment with respect to clause 39(1)(d).

Mr. Martel: That would be contrary to everything they have supported with respect to law enforcement.

Hon. Mr. Scott: They were good enough to tell us what they proposed to do.

Mr. Chairman: I am going to call you back to order here a little bit. We have an amendment that is before the committee.

Mr. Sterling: The confusion arose when I was up getting a coffee. One of the Attorney General's people came up to me and asked me if we were going to support the written arrangement. I thought he was referring to clause 39(1)(c). I do not know what the words were. We were passing the coffee.

Mr. Warner: There was an amendment that we had drafted with respect to clause 39(1)(d). I understood the arguments about the law enforcement and, based on that, chose not to proceed with the amendment.

Hon. Mr. Scott: There is an international treaty respecting the abduction of children, but often the exchange of information relating to the abduction of children is made not under the treaty but with respect to an oral or unwritten arrangement between police forces, particularly with American police forces.

Mr. Warner: But under the acts of the Legislature and of Parliament, there are also arrangements between the federal government and the provincial government, for example, for money to flow that supposedly is to be spent on health care, and we remember going through great fights in the past where there was no guarantee that the money, although it was supposed to be spent on health care, was ever spent on health care, and would it not be nice to have a written agreement and not simply rely on the good word of someone here and someone in Ottawa.

Hon. Mr. Scott: Look, nobody has the slightest hesitation in asserting that it would be nice to have a written agreement, and for our part, the government of Ontario does not resist written agreements and encourages them. The fact is that under clause 39(1)(c), as well as under (d), we face the reality that there are some police forces that will not enter into written agreements, and the issue is whether you want to permit the exchange of information under arrangements.

Mr. Martel: The Attorney General keeps referring to clause (d). He talked about clause (c) and he immediately coupled (d) to it. We are not talking about policing. We have no intention of moving this. You will notice that we dropped all the amendments that had been proposed by my colleague with respect to law enforcement. We dropped every one of them. I wish the Attorney General would quit playing around.

Hon. Mr. Scott: I am sorry. I withdraw any reference to (d). Read my remarks as applying only to clause (c).

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Mr. Warner: Okay. Could I make one last effort? I want to be fair about it, but it seems to me that where exceptions are listed in an act, the exception which would apply with respect to law enforcement would be the section which is designated, in this case, clause (d).

If we amend clause (c), it does not in any way inhibit the flow of informal arrangements or information with respect to law enforcement, because that is specifically exempted under a separate section. I would take it that it is proper to read it that the kinds of arrangements we are talking about, arrangements made between governments within Canada or with the federal government, would apply to such things as health payment transfers, child care money or whatever other arrangements are made between the federal government and a province.

Mr. Martel: Does the Attorney General think he cannot get the other side to put it in writing and that is the--

Hon. Mr. Scott: That is precisely it.

Mr. Martel: Why does he not simplify it and say that?

Hon. Mr. Scott: The point I am asked to make to the committee is that (c) applies where there is a treaty. If there is not a treaty, it might be covered under (d), but there is, for example, now a treaty with the US respecting the exchange of law enforcement information. Under that treaty, there may be arrangements, not written agreements, made by the American states.

What I say is that under (c), before we even get to (d), it may be, as I am advised, that information will not be exchanged because the American agency will not make it available to us if we require it to execute a written agreement. I want to emphasize--Mr. Martel makes the point wisely and strongly--that we are not opposed to written agreements, but we cannot compel other jurisdictions to enter into them.

Mr. Warner: That is why I--

Mr. Chairman: I am going to intervene here. We have had an amendment and we have had fairly good discussion about the ramifications of it. It seems

to me we are repeating ourselves quite a bit. I do not want to inhibit debate, but I also do not want to listen to the same arguments five times. Do you want to proceed with this amendment or not?

Mr. Warner: No, I believe I am right.

Mr. Chairman: That is not the question. Do you want to proceed or not?

Mr. Warner: That is why I am proceeding.

Mr. Chairman: So the amendment stands. Is there any further debate on it?

Mr. O'Connor: May I, by way of a question again, which I think I put before to the Attorney General, ask whether he would be satisfied with an exemption which exempted clause (c), as amended--I think we are going to amend it--from any exchange of law enforcement information or law enforcement proceedings, some wording similar to what is in (e)? That would solve the problem he is raising, a legitimate problem I think.

Hon. Mr. Scott: It could perhaps--I could not assert with authority; I would want to look at it--solve the problem with respect to law enforcement, but there would be no transportation and communications information exchanged, for example, which would not be law enforcement information but which might be the kind of information that should be exchanged.

Mr. Sterling: How about individuals? We are not talking about facts; we are talking about individuals.

Hon. Mr. Scott: What we are talking about is this: We do not want to inhibit the flow into Ontario of information that we presently get in the public interest. We are not collecting this information just to abuse people. We are collecting it for a wide variety of purposes. Law enforcement is one. Traffic regulation and intergovernmental concerns about the trucking industry and so on are others that may not be law enforcement concerns. We are collecting this information. We do not want to make an arrangement under the freedom of information act that will make it difficult and perhaps prevent other jurisdictions from giving us information they have. That is not because we want to hurt anybody. That is because we need that information to carry on an effective government.

Mr. Chairman: Is there any further debate on the amendment?

Mr. O'Connor: Does the Attorney General understand the point we are getting to? That is, with the vague wording of agreement or arrangement thereunder, if it is not in writing, that is very broad terminology for a whole range of things the government could hide behind to prevent the release of otherwise legitimate information.

Hon. Mr. Scott: I think I understand the honourable member's point, which is basically that he believes, as I do, governments should make written agreements. I accept that proposition. If you want us to be obliged to offer a written agreement, we will be delighted to do so. The problem is not with us, in this single instance, the problem is with the other government that is perhaps more paranoid and is not prepared to enter into a written agreement.

Mr. O'Connor: That is not the problem. The problem is the vagueness

and the broadness of the term "arrangement." Just about anything can be called an arrangement if it suits the government's need in a circumstance where it does not wish to release information. It can say, "We have this arrangement," whatever that might be, "and therefore we are hiding behind clause 39(1)(c)."

Hon. Mr. Scott: This is a provision that relates to an exchange of information only, and it is only in that context. You can put in "written agreement" if you want to, but I am telling you, if you put that in, it may prevent the kind of, I hope, rare and isolated subterfuge that you are talking about, but I believe and I am told it will prevent the exchange of information. I do not think the purpose of this act is to prevent the exchange of information which we need. I think its purpose is to allow as much of that as we can to go to the public.

The fact is that other jurisdictions are not as committed to freedom of information as the honourable member is, and basically say, "We will tell you what we are not going to tell you if you are going to tell your citizens." In that context, we can say, "We do not want to know who the assassins coming over the border are," or we can say, "That is the way it is going to be."

Mr. Chairman: Any further debate on the amendment?

Mr. Warner, does the amendment stand?

Mr. Warner: No.

Mr. Chairman: You have are withdrawn it.

Section 39, as amended, agreed to.

On section 37:

Mr. Chairman: We stood down subsection 37(2)

Mr. Morin moves that subsection 37(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by inserting after "shall" in the first line "take reasonable steps to" and by striking out "reasonably" in the third line.

Shall the amendment carry?

Mr. Warner: Will someone read it as it would now read with the changes?

Mr. Chairman: Mr. Morin, would you read it again please.

Ms. Baldwin: I can assist. It would read:

"(2) The head of a public institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date."

Mr. McCann: Can I just point out a small editorial note, which is that we had voted on another amendment to take out the word "public."

Ms. Baldwin: Thank you.

Mr. Chairman: Are we clear?

Motion agreed to.

Section 37, as amended, agreed to.

Section 39a agreed to.

Mr. Chairman: We are at section 40. We were a little late getting started this morning. It might be useful to proceed a little bit more. Are there any amendments to section 40?

Sections 40 to 44, inclusive, agreed to.

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On section 45:

Mr. Warner: I have a notation here that Mr. O'Connor had an interest in clause 45(c), where there is an amendment from Ms. Gigantes. I think you were considering an amendment of your own.

Mr. O'Connor: No.

Mr. Chairman: I have a number of amendments that were tabled on section 45. I have no notation that we had agreement on any of them. If there is a wish to put them, this is the time.

Mr. O'Connor: I have no amendment to that. My question was a procedural one as to how to deal with the deleting of three numbers in clause 45(a) as proposed by Ms. Gigantes.

Mr. Warner: That is not the one I was referring to. It is the one that is after that in your book, clause 45(c).

Mr. Chairman: Do you happen to have any amendments to section 45? Shall section 45 carry?

Mr. Warner: Just a minute. Clause 45(c).

Mr. Chairman: Do I have an amendment to section 45?

Mr. Warner: I will put it on the table.

Mr. Chairman: Mr. Warner moves that clause 45(c) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence" in the last five lines and inserting in lieu thereof "unfairly expose the source to civil liability or place the health or safety of the source at risk."

Any debate on the amendment?

Mr. Warner: My notation here is that you had an interest in carrying that principle in the last three lines, maybe with slightly different wording.

Hon. Mr. Scott: The government is opposed to this change. It again deals with the issue of whether sources of information are going to dry up. The present act, consistent with most freedom of information acts, says that

the head may refuse to disclose if the information is going to reveal the identity of a source that would otherwise have remained confidential. The amendment proposed says the identity can be withheld only if it will "unfairly expose the source to civil liability."

Mr. Warner: Or risk.

Hon. Mr. Scott: "Or place the health or safety of the source at risk." I do not know how you are going to determine that. An informant gives us a piece of information that the Premier (Mr. Peterson) is going to be shot at tomorrow. We are asked to reveal that information and the source. The source is very important to us because he provides us with a lot of reliable information over the years and he does so secure in the knowledge at the moment that his colleagues in this underworld will not know he is ratting on them. There are such people, Mr. Warner, even in Scarborough-Ellesmere.

We will be obliged to reveal the information, and for these purposes, the identity of that source, because the information is going to say, in effect, who the identity is, unless we can show that the source would be unfairly exposed to civil liability. I take it what that means is that the source would be sued by somebody in a civil court, but that is not enough, that he would be unfairly sued in a civil court. That is to mean he would be sued in a civil court and would lose, I guess, or would win in a case where he should not have been sued for some other nonlegal reason; or if the safety of the source is going to be at risk. It is just going to be a mishmash.

Mr. Warner: Is it reasonable to assume that your source, who has told you the Premier is going to be shot tomorrow, by so saying places himself at risk?

Hon. Mr. Scott: The reality is that if the names of some sources are revealed, the sources get broken legs. I suppose if we believed they were going to get broken legs, we would be able to say that their safety was at risk. But how are we going to know that? We are not up to date on this stuff. We do not know what source is going to be imperilled by broken legs or what source is going to be figuring in a lawsuit.

Mr. Chairman: This is getting very dramatic.

Mr. Warner: And they are all in my riding.

Okay, no support here, so forget it.

Mr. Chairman: Is that not what I told you 10 minutes ago? The amendment is withdrawn.

Do we have an amendment to clause 45(d)?

Mr. Martel: I think there was some indication and I will move it.

Mr. Chairman: Mr. Martel moves that clause 45(d) of the bill, as printed to show amendments proposed by the Attorney General, be amended by striking out "prejudice" in the second line and inserting in lieu thereof "seriously endanger."

Mr. Martel: I think my colleague was concerned about the interpretation of "prejudice" and wanted to be more specific in what she was saying. I do not think it is very humungous.

Hon. Mr. Scott: It is not very humungous. It is sort of fun though, because the same proposer asks that the word "grave" be removed from section 11, because "grave" is so vague that it does not mean anything, and here introduces "seriously."

Mr. Warner: Endanger.

Hon. Mr. Scott: She introduces an adverb that is just as vague as, if not vaguer, than "grave." I think you could make the case that "grave" is more--

Mr. Martel: "Grave" is a weasel word so you do not have to give any information. You can say everything is grave.

Hon. Mr. Scott: But here we are going to be precise and say as long as it is serious, that is clear.

Mr. Warner: "Seriously endanger."

Mr. Chairman: Are there not any assassins involved in this?

Mr. Martel: No. Where is Perry Mason when you need him?

Hon. Mr. Scott: I leave it to the committee, but in drafting legislation, when you are dealing with legal matters--I know lay members find this difficult to believe, but I am generally sympathetic--there is a real virtue in using words that are traditional. Why? Not because they are phoney or difficult to pronounce or traditional, but because the courts have passed exhaustively on what they mean. Strangely enough, a word like "prejudice" is more precisely understood in the law than words like "severely endanger," because it appears thousands of times and the courts are used to it. The commissioner will have access to that wisdom.

Mr. Martel: I argued this 15 years ago here with Randall Dick or somebody. You lawyers talk about what the lawyers understand while the law should be understood by the public.

Hon. Mr. Scott: I know. When I decided I was going to run, I was just a practising lawyer. I went to a lawyer in the Conservative cabinet and I said I was going to run and he said, "You are not going find it easy in there."

Mr. Martel: That is right.

Mr. Chairman: Is the amendment going to continue on the table? Yes or no?

Mr. Martel: Yes.

Mr. Chairman: Any further debate? Those in favour of the amendment? Any opposed? The amendment is lost.

Section 45 agreed to.

Mr. Chairman: There is some suggestion that this might be an appropriate place to cease business for the noon hour. That being the case, we shall adjourn until two o'clock.

The committee recessed at 12:09 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, APRIL 1, 1987

Afternoon Sitting



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O'Connor, T. P. (Oakville PC) for Mr. Turner

Poirier, J. (Prescott-Russell L) for Mr. Newman

Sheppard, H. N. (Northumberland PC) for Mr. Treleaven

Clerk: Forsyth, S.

Staff:

Baldwin, E., Legislative Counsel

Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Scott, Hon. I. G., Attorney General (St. David L)

McCann, S. B., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, April 1, 1987

The committee resumed at 2:14 p.m. in room 228.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT
(continued)

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Sections 46 to 49, inclusive, agreed to.

On section 50:

Mr. Martel: I guess this is as good a place as any to make the fight on--this is not the override, is it?

Mr. O'Connor: No.

Mr. Martel: It is, in a way. It is to appeal the decision of the head. You have the choice of going to a court or to the commissioner himself. I am going to move it anyway, Mr. Chairman. We might as well have the discussion now as later on this.

Mr. Chairman: Let me help you a bit. At various times on the way through, the committee has dealt with a variety of amendments dealing with what we laughingly call a "public interest override." It strikes me that somewhere in this appeal section, if you want to have such a provision in general terms, one of these sections would be the logical place to put such a provision.

The first question would be, is there any preference as to where we make this attempt? If there is none, then I would take Mr. Martel's suggestion that this would be as good a place as any to have this argument and make the decision. You may recall we indicated earlier that we wanted to have a general discussion about an override principle. If you want to do it, is it more appropriate to do it once under this section or to provide subsequent amendments all the way through. I sensed the committee felt it wanted to have the argument first in principle and that you would look at an amendment here. If you determine, as a committee, that you want to make amendments to various sections, we are in possession of amendments that would do that. We can do it either way.

What I am announcing is that this is where we are going to have the argument about whether you want to provide for an override provision in the bill that would allow appeals in the public interest. Let us do that. Probably the best vehicle is to have Mr. Martel move one of the amendments he has at his disposal.

Hon. Mr. Scott: Is it amendment 50(1a)?

Mr. Chairman: I am not sure which one he is going to put.

Hon. Mr. Scott: That is not an override.

Mr. Martel: No, it is not.

Mr. Chairman: Which of the ones do you want to put? I will take guidance from anybody here.

Hon. Mr. Scott: Can I make a suggestion? I think as we launch into this, it is going to help me and perhaps other members of the committee if we recognize that we are talking about three separate things that are easily confused in language, but are entirely different. The first we call "an override"; the second we call "the appeal of the minister's discretion"; the third we call "the appeal to the court." They are different.

I can understand the committee might want to do all of them, none of them or one of them. The override is very simply this: The head, as sections 12 through 17 say, shall disclose or may disclose or shall refuse to disclose. Do you want to give him an override to say, "Even with these rules, he can ignore it." That is the first issue.

Mr. Martel: The head.

Hon. Mr. Scott: Yes.

Mr. Chairman: If I can intervene a bit, I take it from the general drift of the committee that this was not the first priority; let me put it that way. Otherwise, you would have been moving all the amendments all the way through. We are focused on the second option, that it will be the commissioner who has clear provision in the public interest to overrule a decision by a head.

Hon. Mr. Scott: That is subsection 50(1a). That is not the override we have been passing on from day to day. The point here is that he may exercise the discretion that the head had. Let me see if I can explain what the act contemplates and what I think Professor Williams contemplated, because I think the act, in this respect, reflects his view.

Mr. Chairman: Let me just test the waters here. Everyone generally understands what the discussion will be about. We will put an amendment by Mr. Martel to subsection 50(1a) and we can broaden it or curtail it as much as we like on the way through. We are trying to focus the discussion around whether there will be an override provision for the commissioner in the public interest. If the wording is not to your satisfaction--

Hon. Mr. Scott: No, that is not what this section is about.

Mr. Chairman: Okay, if that is not to your satisfaction and the Attorney General has a better place to put it, have your staff prepare that and talk to Mr. Martel over there, but we would like to begin this discussion now. If there is a better place to put it or a better way to word it--

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Hon. Mr. Scott: There is no better place to put it, but let us remember we are talking about two different things. We are talking, first, about the override that we passed on several times as we moved up to here.

Mr. Martel: Deliberately.

Hon. Mr. Scott: Deliberately. That is one issue. Then we are talking about what you might call "an override," though I do not think it is appropriate to call it "an override," which is subsection 50(1a). That is entirely different. There are two different subjects.

Mr. Martel: It depends on whether you want to send it to the commissioner or to the courts.

Hon. Mr. Scott: The courts are something else.

Mr. Martel: Okay.

Hon. Mr. Scott: Subsection 50(1a) is not at all the same as the override provisions we have passed along the way to come back to.

Mr. Chairman: That is right.

Hon. Mr. Scott: It raises an entirely different question. It seems you can deal with any of those three issues at this stage. All I am concerned about is to get a sense of which one we are dealing with and then we can get an understanding of exactly what is at stake and deal with it.

Mr. Sterling: With the Attorney General's assistance, can I try to understand this thing. Under section 12 where you have the cabinet records and the public override as has been stated in there, if there were clearly a cabinet record that was exempted by that section, then that public override would allow the information commissioner to give that information out, period. It would not matter what the sanction was against it, and that would hold true in terms of the law enforcement section, wherever Ms. Gigantes had introduced those amendments.

As I understand this section, it says that where there is a discretion given in the exemption section where a head may or may not disclose, and the head uses his discretion not to disclose, the way the act now is written, the information commissioner cannot challenge that discretion.

Hon. Mr. Scott: I think the distinction you make between the two kinds of sections is precisely the distinction I was trying to make.

Mr. Sterling: Okay.

Hon. Mr. Scott: I think you read the second section a little differently than I would encourage you to do, but you and I are on the same wavelength in terms of distinguishing between the two kinds. I think you can see it this way, if you take cabinet records. The cabinet records section, section 12, is the first one for which Ms. Gigantes proposed an override. That says, "A head shall refuse to disclose...." and lists things that should be refused. According to her amendment, she wants to add a subsection 3 that says, "Subsection (1)--the refusal to disclose--"does not apply to a record where the public interest in its disclosure outweighs the interest of the executive council in its continued confidentiality."

As I understand it, in practice, that means the head can say: "The act says I cannot disclose this. The Legislature has said I cannot disclose this. But I am entitled to disclose it if I want to by weighing the interest in disclosure against the interest in confidentiality. In other words, I can

ignore the rules the Legislature has set." Because there is a complete appeal to the commissioner, of course, if you give that power to the head, you will also be giving that power of override to the commissioner. It seems to me that is the first issue the committee has to decide with respect to a number of sections.

Mr. Chairman: Let me intervene there and say that you have not moved the amendment. The committee has at least for now set that discussion aside and wants to focus on whether the commissioner himself or herself will have that power of discretion. That is where the argument now centres.

If, in the course of this, you want to expand that, you may have to go back through every section of the act and do that, but I think what the committee has said so far is that the first consideration it wants to make is whether there should be an override, whether there should be discretion on the part of the commissioner to exercise an option in the public interest so that it would function in a way that the heads do not have that discretion. Only the commissioner would have that and we would be able to monitor how many times he has done it.

Mr. Chairman: Yes.

Hon. Mr. Scott: That relates to the head's power, found in a number of sections, where it says "the head may refuse to disclose." The cabinet one says, "a head shall refuse to disclose," but subsection 50(1a) says "the head may refuse to disclose," and it sets out the grounds, that he shall refuse to disclose in the following conditions. Why did we say "may" there rather than "shall," because we said "shall" in cabinet documents? The reason we said "may" is to give the head the right to put the document into the hands of the public even though there were reasons to keep it in.

Let us take as an example advice to government, section 13, "A head may refuse to disclose a record where the disclosure would reveal advice or recommendations." Someone may come along and say, "I want to see the deputy minister's advice and recommendation to the minister of transport relating to the construction of a certain road in 1940."

The head looks at the act and says: "My God, that would amount to revealing advice. I cannot do that unless it is sufficiently old, and if it said, 'I shall refuse,' I would be absolutely prohibited from releasing it. But let us get real. While I would want to refuse its release if it happened yesterday, if it happened 15 years ago I am not going to cause a fuss; I am going to let it out." In that case, you let the head make a kind of political decision: "Yes, we could keep this in and will keep it in in normal circumstances, but it is no big deal. Let it go."

Mr. Martel: What if it is a big deal?

Hon. Mr. Scott: Then he could keep it in.

Mr. Martel: That is what is bothering Ms. Gigantes, based on the amendments she has moved. What if someone is trying to subvert information, rather than give it to the public, when it is in the public interest to know what is going on?

Hon. Mr. Scott: Let me give another example, Mr. Martel. Let us take section 13, "A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant." If someone comes along

to me and says, "Look, Attorney General, I want you to give us a memo that the deputy minister sent to the Attorney General that dealt with a major event six months ago," some major case, I may say: "That information is protected from disclosure. I have the right to refuse it to you and I am going to exercise the right."

But suppose someone comes along and says, "I would like to know if the deputy minister gave any advice to the minister in cabinet about whether the minister should support the Easter Seal campaign." He would say: "I do not know why you would want to know that. I could prevent that because advice is protected, but frankly, I am not going to. I am going to let you have it. You have no right to have it in a technical sense because it is advice and the time for the making the advice public has not come into play, but the minister has the right to make a political decision to let you have it."

We could have said "shall," in which case the minister would have been obliged to refuse that. It was to widen the act, to create disclosure, that we said to the minister, "Even if you can technically refuse it, you are going to have the opportunity, if you think it is trivial, unimportant or no harm will come of it, to release it."

Mr. Martel: What about the other scenario, if it could cause him political harm because he has made a real faux pas and is trying to cover his derrière?

Hon. Mr. Scott: If it then said "shall," there would be no option.

Mr. Martel: No, you are missing my point. What if he has a right to refuse to give the information and in fact he is endeavouring to protect himself from what the disclosure would reveal? There is no appeal against that, is there?

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Hon. Mr. Scott: Yes, there is. The issue of whether the minister has the right to refuse to release the information is always appealable, and the commissioner can make exactly the decision all over again. What is not appealable is the minister's capacity to say: "I could have refused this. We all agree on that, but I am going to let it go anyway."

Let me give you another example. Let us assume someone comes to me and wants some law enforcement information. They want to know all about the John Jones case in 1945. I look at the statute and I say, "Look, I cannot give you that information." If it said, "Thou shalt not disclose," my hands would be tied; but it says I may refuse to disclose and that means I can say: "Look, I could stand on my rights. I could refuse to let you have it, but it was all about a parking ticket in Ingersoll in 1945 and I am going to let you have it, because it is not worth fighting about."

Now, the issue is as follows. When I, as minister, have decided that the citizen is not allowed to have it by law because the statute says it should be private, but I am going to give it to him because it is so trivial, should that decision, which is essentially a political decision, be made by the commissioner as well? If you answer yes, that means there are no rules for the commissioner at all. He can do anything he wants with respect to anything. That is why Dr. Carlton Williams indicated that an appeal--

Mr. Warner: That would happen only if somebody appealed it. Why

would I appeal it if you gave me the information I wanted?

Hon. Mr. Scott: Let me put it this way. Let us take two cases: an important criminal case that is going to be tried next month in which the accused asks for information and a trivial criminal case conducted three years ago in which the accused, after the event, asks for information.

Let us assume that both pieces of information are precluded from release because they relate to law enforcement. If the statute said, "shall not disclose," the minister could not release either piece of information; but, it says, "may refuse to disclose." That gives the minister the power to say, "Both of these could be kept private, but I am going to keep the first one private because the case has not been tried and I am going to let the one where the case was tried five years ago go out to the accused."

What this does is that it gives the minister, once he has decided--which the commissioner will always review--that he could refuse to release the information, the right to say, "I will let it go anyway."

Mr. Warner: That is not being changed.

Hon. Mr. Scott: It is proposed to be changed.

Mr. Martel: You are using examples. Let us say a minister got into hot water--a minister decided that there was some material in a file--and let us say it is four meetings with a ministry official which he was not supposed to have. The minister then could refuse, could say no.

Hon. Mr. Scott: The first question in that case would be, is the minister entitled to refuse that information? If the answer is no, out it goes. If the answer is yes, he is entitled to refuse it. He can then refuse it and the commissioner can decide whether he was right. If the section says "may" it means that he may say, "I am entitled to refuse it, but I am going to let you have it anyway."

The question is, should--

Mr. O'Connor: Is the public interest served?

Hon. Mr. Scott: It does not even have to be public interest. He can do it because he thinks it is trivial. The question is, should the commissioner have a similar right? The problem is that the commissioner is going to be the one who is going to decide whether the head could refuse to disclose it. There is a complete appeal there. But when the head says, "I could refuse to disclose it, but I have decided in my discretion not to, because it is so trivial," should the commissioner be entitled to decide that all over again as well? If the commissioner is going to decide that, there is no point having the head decide anything.

Mr. Martel: Because everyone will appeal to the commissioner.

Hon. Mr. Scott: No, because there will not be any rules that will apply to the commissioner.

Mr. Chairman: Pardon me for intervening, but I think we are getting near the gist of the argument. The basic premise here is that you are opening up the rules under which the commissioner may overturn a previous decision. In effect, if this amendment should carry, it will be pretty much at the

commissioner's discretion. He can say, "The guy was in the legitimate confines of the act not to disclose that, but I think it ought to go, so it is going to go."

It could be in the public interest; it could be because he feels there was no legitimate reason for holding it back; it could be for virtually any reason. He has the power to hear the case and make a decision which is contrary to the first decision. That is why we are talking about discretion on the part of the commissioner and putting it in under this section. That is our first argument. I think we are getting nearer.

Mr. O'Connor: In defence of the commissioner, I would suggest that is his function. That will be his role, presuming he will be somebody appointed after considerable discussion and thought by the government, who has experience in this area, who will be the one person in all this mix who has the most experience from the backlog of cases and who will have dealt with this act from the beginning. He is perhaps the person in the best position to decide ultimately whether information should be disclosed or not.

In the first instance, we are dealing with heads who may or may not get a large quantity of applications and who may, for their own purposes, routinely exercise their discretion against disclosure. What good is it then for a commissioner to come along and say, "Sure, he was right to exercise his discretion," but then have no authority to do anything about it? The amendment would then allow him, in cases where they had exercised their discretion frivolously, to do something about it and not to say only, "Sure, he was all right in exercising his discretion, but now I think it is in the public interest that this information be released" and release it. Either we are going to give the commissioner some power and authority to run this act or we are not; we are going to make him a rubber-stamp of what has gone on below him. That is the issue.

Hon. Mr. Scott: May I ask one question? I think it is important that we all understand, and maybe I understand differently, that you are going to have a contest between the ministry and a person requesting information--perhaps a reporter--and the privacy of the individual. You are going to have a triangle.

Mr. O'Connor: No.

Hon. Mr. Scott: You may.

Mr. O'Connor: The privacy sections are "shall" sections; they are not "may" sections. There will be no discretion in the ministry.

Hon. Mr. Scott: All right, leave privacy out of it. I simply ask you this question: will there be any rules under your system that will constrain the commissioner? Will there be anything he cannot do?

Mr. O'Connor: Yes.

Hon. Mr. Scott: What?

Mr. O'Connor: The commissioner will be guided by the rules that are set up in sections 12 to 21.

Hon. Mr. Scott: But he can ignore them.

Mr. O'Connor: He can ignore them. With his experience, his knowledge of the act and having worked with this over the years, I think he is the person in the best position, in the sections which give discretion to release or not, to make that decision.

Hon. Mr. Scott: Will there be anything he cannot do?

Mr. O'Connor: Yes.

Hon. Mr. Scott: What?

Mr. O'Connor: He cannot release documents under sections 12 and 17 and in the personal privacy sections. We are dealing with only those that have a discretion.

Hon. Mr. Scott: Yes, but I think there are only two sections where "shall" is used. I suppose what we should do is go back and put "shall" in every one.

Mr. O'Connor: Sure, if you want to cut back your act and fly in the face of your public statements that you are the great champion of this stuff.

Hon. Mr. Scott: You did that yesterday.

Mr. O'Connor: I know.

Hon. Mr. Scott: It got in the paper yesterday, which I know you wanted.

Mr. O'Connor: So did you.

Hon. Mr. Scott: Actually, the reporter is here who covered it, so you said it at just the right time. He is only here for a few minutes.

Mr. Chairman: I have other members who would like to engage in the argument that is currently before the committee. I do not mean to interrupt this one.

Mr. Sterling: When a commissioner is faced with an application for an appeal, the first thing he will decide is whether it is technically within the section either to disclose or not disclose the document. The second thing he will look to will be the public interest test. The exemption sections do not become meaningless as such, because they provide the first element of the information commissioner's decision.

There may be two other sections that I would not want within the discretion area, and those are sections 14 and 16. I do not know whether the committee is concerning itself with where it wants the discretion override.

Hon. Mr. Scott: Dr. Williams recommended against this. The reason he recommended against it is that the commissioner will have the perfect power to decide: "This is going to interfere with the fair trial of a case if this document goes out. I have decided that, but I am going to release it anyway."

Mr. O'Connor: Why would he release it?

Hon. Mr. Scott: The reason Dr. Williams recommended against this, and the reason the government cannot accept the proposal, is that it means a

judge, the commissioner who is sitting in appeal from the head, will not be bound by any rules at all. He will be a judge unlike any judge in the world. There will be no constraints on him, in the sense that he can say: "This is a law enforcement matter. This is going to affect the fair trial of a litigation. This is going to freeze up all the government sources, and this is going to lead to a criminal going free, but I am going to release it anyway because, in my judgement, everybody should see it."

Mr. O'Connor: Why would he make that judgement in that fashion?

Hon. Mr. Scott: No, but he will be king.

Mr. O'Connor: What is wrong with it?

Hon. Mr. Scott: You do not judge on that.

Mr. O'Connor: Surely you have some faith in your commissioner.

Mr. Chairman: To intervene for a moment, we are having a very illegitimate discussion which is going to be interrupted by a lot of interjections back and forth. I am going to try to protect everybody's right to put his statement on the record, and I am also going to try to keep everybody else off the record, so cut out the interventions. Put your argument. If you have some logic, give us all a chance to see it.

Mr. Warner: If I could pick up where the Attorney General left off, is there a particular problem if you decide there will be certain sections of the act in which the commissioner has no leeway? Mr. Sterling mentioned section 14, which deals with law enforcement, and section 16. If you exclude those from his discretionary power, then surely to goodness the example you gave would not happen. In fact, what you have is a form of appeal to a commissioner, and it perhaps avoids the other danger you spoke of earlier, of ending up forcing people into court.

If you want to have some mechanism of appeal beyond the head, then there are not a lot of possibilities. One of them is that the commissioner has this opportunity. I do not see what is wrong with that.

Hon. Mr. Scott: If I can answer the question, let us take as an example section 19, "A head may refuse to disclose a record that is subject to solicitor-client privilege."

That means that if it is subject to solicitor-client privilege, the head can say, "You are not getting it." It means he can also say: "Look. The solicitor-client privilege was 11 years ago. The accused has died; the lawyers have died; it does not matter anyway; I am going to put it out."

If the head says, "This is matter of solicitor-client privilege, and I am not going to release it," the citizen can appeal to the commissioner. The commissioner can decide if it is solicitor-client privilege, but the amendment says, if he decides it is solicitor-client privilege, he can still say, "I am going to release it." There will be no requirement that the commissioner apply the law. He can say, "This is solicitor-client privilege, but I am going to release it anyway." He will not be bound by any of the standards of the act.

Mr. Warner: But you just finished saying you would allow the head to do that.

Hon. Mr. Scott: But the head is the client in that case. The head is the person--

Mr. Warner: Okay.

Mr. Chairman: I do think we are getting the argument out. I do not think the interplay is serving much purpose.

Mr. Sterling: Maybe Mr. Eichmanis can clarify this for me. I understood Williams did recommend a public interest test by the information commissioner. Basically, what happened in that case is that there is an appeal from the information commissioner to a tribunal under Williams' models.

Hand in hand with our party's support for an amendment like this would be a necessary appeal to a Divisional Court on a trial de novo, because basically, if you give the interest override, you have then to provide some kind of appeal mechanism in behind that.

What you are getting then is really, in my view, a more perfect Williams model of appeal process than has been put forward by the Attorney General (Mr. Scott).

I think that if you are going to claim that you have an independent review, as you have claimed, Attorney General, then you cannot confine it to a technical evaluation of whether it lives in this section or not, but there must be a public interest override. This section makes the difference between, with respect, the different legislative proposals that have been put forward.

Hon. Mr. Scott: If I can respond to that observation, I regard as much less significant, in terms of how the system works, what kind of appeal you have to the court. That we can deal with later. If the committee decides it wants a wide-open appeal to the court, it has heard my reservations about that, but we can certainly live with that.

What we cannot live with is this so-called override. Professor Williams gave the reason in his report. He says, at page 316, summing up an elaborate discussion of this important issue, "Although we are generally disinclined to recommend adoption of provisions containing broad references to notions such as 'the public interest'--that is, the override--"we believe there is a persuasive argument in favour of adopting a limitation of this kind on the operation of the commercial information exemption."

You will know that in the act we have done exactly what he has said, because we have it in the commercial information exemption. What we are doing here is we are following precisely what Professor Carlton Williams, after three years of studying this, said, that notions of override run by a commissioner are not going to work, generally speaking, because there are no standards. You are just saying to them, ignore the standards of the act that the Legislature has set up and do what you please by looking at the public interest. What he says is, when you appoint a person for five years or 10 years and say, "When the appeals come to you, do what you please with regard to the public interest," it is great if he is a great guy, but if he is a disaster, you have 10 years when nothing gets out.

Mr. Martel: Fire him.

Hon. Mr. Scott: You cannot. He is like a judge. He says that is why it is important to constrain judges. This idea that judges do everything, and

do everything perfectly, is accepted only by those who have not seen them in operation.

Mr. O'Connor: I just cannot accept the statement that there are no standards. The commissioner will be guided by the standards set out in the sections and in the ministry from which the appeal has come to him. There will have been standards applicable in sections 7 or 12 through 21 to the head in question. He will be guided by those. He will also be guided by the public interest override. He will have developed sets of standards to determine what is in the best interest of the public. Why should that not be the bottom-line standard? Are we not here to serve the public? Is it not the public's best interest that is really at stake in all of this? Why should it not override everything? Why should it not override the interests of cabinet ministers, the interests of a minister and a ministry?

Hon. Mr. Scott: I think the Legislative Assembly is the appropriate place to make that decision. That is why you are writing rules. That is why, when the issue comes to the minister, the issue will be, is this a law enforcement matter that the Legislature says shall not be released? When the issue goes to the commissioner, if you buy this override, the question will not be, is this a law enforcement matter? The question will be, should you let it out anyway?

Mr. O'Connor: No. The question will be, is it a law enforcement matter and does that mean it overrides the public interest? If it were a law enforcement matter and it meant endangering somebody if he released it, he is not going to release it.

Hon. Mr. Scott: Could he still override?

Mr. O'Connor: Unless you are prepared to appoint some fool who is going to run--

Hon. Mr. Scott: The override, as Professor Williams points out, is designed to authorize him to release it even if the statute says it shall not be done.

Mr. O'Connor: Yes, but he is going to be guided by the best interests of the public. He is going to be guided by the guidelines set out in the sections. Furthermore, there is an appeal to the court, or there will be an appeal to the court, if the section we are proposing passes, to put some kind of damper on his actions in that regard.

Mr. Martel: Can I ask the Attorney General a question? Unlike him, I am not learned in the law. You are prepared to send this to a court for consideration but you are not prepared to let the commissioner decide. Why?

Hon. Mr. Scott: That is not my position.

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Mr. Martel: Just a couple of minutes ago you said you would be prepared to accept the latter, the courts, but you are not prepared to accept an appeal to the commissioner. Why?

Hon. Mr. Scott: No, that is not what I said.

Mr. Martel: Forgive me, then; I am not understanding you.

Hon. Mr. Scott: The point I was trying and obviously failed to make is that the kind of appeal that you take to the court is an important issue, and we will be coming to that. In my opinion, the question of whether you have judicial review in the court or an open appeal is much less important in terms of the system we are creating than the present question.

The present question says that the minister or the head of the institution is going to focus on whether the information fits into one of these categories. If it fits into a category, he may refuse to disclose it. So the issue for the Attorney General will be whether this is law enforcement information of the type he is authorized to refuse. When it gets to the commissioner, the argument will not be whether it is a law enforcement issue; that will be one small question. The issue will be, even if it is an issue of law enforcement information, can the commissioner put it out anyway? The point I make is that there will not be any rules for him.

Mr. O'Connor says, "He will follow the law enforcement rules," but if he followed the law enforcement rules, you would not have an override. The override is there so he can ignore the rules you have created.

Mr. Mancini: I have a question. Can we find out what the reaction was of the Conservative cabinet when Mr. Sterling brought proposals to the cabinet when he was responsible for freedom of information, and what kind of treatment he got when he brought those matters forward?

Mr. Chairman: That is really helpful; I appreciate that.

Mr. Warner: I have one point. I do not agree with you because the amendment says that "the commissioner may exercise the discretion of the head." Whatever discretionary power rests with the head, we are suggesting that similar discretionary power would rest with the commissioner. Why, then, would you believe there would be a set of rules for the head but not a set of rules for the commissioner? All that is being said is that another individual, this one with greater power, has the opportunity to exercise the same discretion that we will have allowed the head to exercise.

Hon. Mr. Scott: I think that is not correct. The difference is that, in most cases, the head will be making a quasi-political judgement, for which he will be answerable in the Legislature.

Let me put the proposition this way. I am boring the chairman and I do not want to go on. Let me say to you that there is no freedom-of-information act in the world of which I am aware that has the override that you are examining or a provision like subsection 50(1a).

Dr. Carlton Williams and a very distinguished panel, for which the research director was Dean John McCamus, who is about as committed as anybody in Canada to freedom of information, spent three years canvassing this issue. It was complex, difficult and refined, and the panel reported against the very thing that you are being asked to do, except in respect to commercial information. That is a fact. I did not make that up.

What I say to you is that before we upset the scheme, that is, alter the scheme that Professor Williams, Dean McCamus and the other staff recommended, and create a scheme for the appeal of information determinations that is unique in the western world in the powers it gives to a nonelected commissioner--who is there for a decade or five years, whatever the period--I hope all committee members with me will be absolutely certain that we know not

only the impact of what we are doing but also why we are doing it, because someone is going to ask us.

At the end of three years, when we have some on-the-ground experience with what Dr. Williams recommended, you may say: "Dr. Williams was an academic who was doing a study. Now we have had the thing for three years and we think we could have more courage than he had and can make a change." But he was supposed to study this. He is no Conservative or Liberal hack. He may not be perfect, but he devoted a lot of time to it. He drew this conclusion, and it is hard to explain to you my sense of how important this is to the scheme if you believe in the rule of law.

I ask you to consider leaving the act Dr. Williams recommended in place for three years. We will know at the end of three years whether it can be improved, and at least one of you will be here to remind us of this debate.

Mr. Warner: You may be asked to help him out.

Hon. Mr. Scott: I will be long gone by then.

Mr. Chairman: On that cheery note, it seems to me we have put the question reasonably well this afternoon. It is now time to make up your minds. Mr. Martel has moved the amendment to subsection 50(1a). Mr. Warner, do you have a point?

Mr. Warner: I just wondered whether we could have a couple of minutes to confer with our colleagues before we vote on this.

Mr. Chairman: If you want to have a break, you may, or you may have a voice vote and then a recorded vote.

Mr. Warner: It is an important item, and we take it seriously. I would like to discuss it with the other members.

Mr. Chairman: Okay. We stand adjourned for five minutes.

The committee recessed at 2:56 p.m.

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Mr. Chairman: I think we are ready to resume. We have before us an amendment to subsection 50(1a).

Mr. Warner: Mr. Chairman, I want to take just a few seconds. We have weighed this matter very carefully. I note that the wording of the amendment says that "the commissioner may exercise the discretion of the head," in other words, exercise the same discretion or conform to the same rules with which the head is obliged to live.

There is already an appeal that the government put into section 17. I note that the type of situation that the Attorney General has spoken of with respect to the commissioner having a very powerful position--I am paraphrasing--may be similar in many ways to the powers we have invested in the Ombudsman. There are very limited situations under which you appeal the Ombudsman's ruling to the court. We gave the Ombudsman quite a bit of latitude and discretion. I do not think the world has fallen apart since the Ombudsman started in the business in 1975 or 1976.

I suspect that the same argument, which I accept, from the Attorney

General about the experience we will have with this bill says that if we do end up with an enormous number of appeals and it becomes quite unmanageable and unworkable, this committee will be reviewing that. At the end of three years, if it seems prudent to remove the powers from the commissioner, I assume that will be done. If I can use rather loose language, it seems to me that this type of appeal is a better approach than saying everything should go to court: "If you are unhappy with the process here, you should go to court." That is a rich person's game.

There were some very legitimate concerns raised with respect to law enforcement. While I believe that they are already exclusionary, I certainly would be prepared to reinforce that by saying that sections 14 and 16 do not fall under this appeal mechanism. I think section 12 is already automatically--

Hon. Mr. Scott: Without pressing it, can I tell you something about section 19?

Mr. Warner: That is pressing it, but--

Mr. Martel: I had my own words down for what section 19 means long ago. I cannot use them here.

Mr. Chairman: That is right. You sound like the Treasurer (Mr. Nixon).

Mr. Warner: With those brief words, I am prepared to vote on this section and if it happens to carry, then we would like to see an exclusion of sections 14 and 16.

Mr. Chairman: All right. Any further debate on the amendment that is proposed?

Mr. Sterling: I wanted to ask legislative counsel, if sections 14 and 16 are going to be excluded, is it best to do it within the embodiment of this section, or how would that be approached?

Ms. Baldwin: My understanding of what you were saying is if you passed subsection 50(1a), you would be changing some of these other sections from "may" to "shall," unless I misunderstood.

Mr. Chairman: No. Let me try to clarify it from the chair's point of view. I have heard the committee members say that they want to have this discussion in principle once around this amendment. There has not been a general discussion within the committee about amending other sections of the act, although that possibility does exist. So I would say that before you now is an amendment on one section and one alone.

My reading of the amendment says that any exclusions you might want are probably contained within this amendment. You may want to clarify that and do a little work on the wording, but, in essence, I read it as saying that when the commissioner makes his intervention, he has only such powers and such discretion as the head may have had, but he may overrule that. If the head were not permitted to release information under some section of the act, the commissioner could not either. In other words, he has that same discretionary power as the head has, and only that much and no more.

If there are those who want to amend this proposal further, they can certainly do that now.

Mr. Warner: Can legislative counsel do it?

Ms. Baldwin: If I understand what you want to do, you want to go with Ms. Gigantes's motion on subsection 50(1a) but have it not apply to certain of the sections that are exemption sections. That would be draftable under subsection 50(1a) by saying, "where the commissioner upholds a decision of a head that the head under sections" and then list the ones you want to apply to this extension of the discretion of the head to the commissioner.

Mr. Sterling: I suggest also that subsection 17(2) becomes redundant if this section carries. It is basically the same.

Ms. Baldwin: I disagree with you, Mr. Sterling. As the Attorney General said earlier, there are two issues here. One is whether the balance between the public interest and the exemptions is a substantive consideration that one takes in deciding whether to release a document. The other is whether the person deciding has the discretion to ignore the substantive criteria and decide on his or her own view of what may be appropriate.

Mr. Chairman: We are getting near the point where a vote might be appropriate. I do not want to rush you. Is there a sense on anyone's part that you want to try the waters in clarifying the amendment as put by adding various sections to it and being specific, or no? Now would be the appropriate time to move such an amendment.

Mr. Sterling: I move an amendment to the amendment.

Mr. Chairman: Mr. Sterling moves that after the words, "Where the commissioner upholds a decision of a head that the head may refuse," the words "under sections 13, 15, 18, 19 and 20" be inserted.

Mr. Martel: I said some time ago basically what is bothering me. The thing that worries me about the whole section since I moved it is that once you start appealing or excluding, where is the end? Quite frankly, as a result of this section, I do not think we are going to finish today. What I would like to do, with the chair's indulgence, is to stand this section down and discuss it with some of my colleagues because I am just not sure about it myself. I do not know enough about it; I admit that quite candidly. I would prefer that we stand this section down and deal with the rest of the bill today, as far as we can get. I have a gut feeling about this and I am not sure enough about it.

Mr. Chairman: I have had a request from a member, as a matter of fact from the member who moved the motion, to stand the section down. Normally, I would accept that but I am going to seek a little direction from the committee because we have had a long argument.

Mr. Mancini: I support Mr. Martel's motion.

Mr. Chairman: Are you in agreement that you would be prepared to stand this section down?

Mr. Sterling: The one comment I have is that it will be necessary for us to request standing down Mr. O'Connor's amendment to section 52.

Mr. Chairman: Yes. The only thing I was going to point out is that in standing this section down, you bring the process to a halt this afternoon.

Mr. Martel: No.

Mr. Chairman: There are other things we can do, but there are also other critical factors that are dependent on what you do in this section. For example, if you are going to take some of the proposals on the court process that were put earlier by Mr. O'Connor, I would think you would view them in quite a different light, depending on whether this section carries. If you are standing it down, I think you do so with the knowledge that we are not going to finish this thing this afternoon and that we will come back at a later date to do it. That is fine. I can go through some remaining sections of the bill.

Mr. Martel: I think we can almost finish everything else in the bill this afternoon.

Mr. Chairman: Yes, we can do that. I take it I have agreement from the committee that it is acceptable to stand this section down. We will pick it up when we can. Is that agreed? Agreed. Section 50 is set aside for the moment.

Section 51 agreed to.

On section 52:

Mr. O'Connor: I ask that my amendment to section 52a--for some reason it is entitled 52ab--be similarly stood down until we deal with the subsection 50(1a) matter because it hinges on what happens in that circumstance. If 50(1a) passes, I would be amending section 52a to restrict the right of appeal to the court system. If 50(1a) does not pass, I would want subsection 52a to pass in the form shown in the book.

Mr. Chairman: I think we can deal with section 52 and stand down your amendment to section 52a. If that is agreeable, we can proceed in that way. We will deal with what is printed in the bill and we will make a notation that Mr. O'Connor has placed before us an amendment called section 52a. Is that agreeable? Okay.

Mr. Chairman: Shall section 52 carry?

Mr. O'Connor: There is an amendment to section 52.

Mr. Chairman: Yes, but in essence, it is a new section. It does not change.

Mr. O'Connor: No, there is an amendment to subsection 52(2) in Ms. Gigantes's name.

Mr. Chairman: I do not know whether that one is going to be moved.

Mr. Warner: We made the change earlier in the bill.

Mr. Chairman: The change has been made previously.

Mr. Warner: The change will be reflected in the appropriate sections.

Mr. Chairman: If that is agreeable, we will carry section 52 and we will note that Mr. O'Connor has an amendment called section 52a that he wants to put.

Mr. Martel: Hang on.

Mr. Warner: Hang on. Maybe I misunderstood.

1520

Mr. Martel: We need this one, Mr. Chairman. Given that the other one has already been passed, I do not see any difficulty in getting this one.

Mr. Chairman: Mr. Martel moves that subsection 52(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "and privacy commissioner" in the second line and inserting in lieu thereof "commissioner or the assistant privacy commissioner."

Hon. Mr. Scott: May I ask, as a question of curiosity, why it is the assistant privacy commissioner rather than the assistant information commissioner? You will remember that we compelled the commissioner--

Mr. Martel: One of each.

Hon. Mr. Scott: Yes, we compelled them to appoint one of each. The purpose of this section is to restrict the number of people who can look at a cabinet record or a law enforcement record. It seems to me that if you are going to restrict that, and obviously that is the intent of it and probably desirable so that leaks do not occur, you would want the commissioner to look at it, but if he cannot do it and he needs a delegate, you are more likely to want the assistant information commissioner.

Mr. Chairman: That is the way it would read.

Mr. Warner: That is what it says.

Hon. Mr. Scott: Sorry?

Mr. Chairman: The amendment would strike the words "and privacy commissioner."

Hon. Mr. Scott: No, I am sorry, what it says now is that under the act as we drafted it, there was one assistant called the assistant information and privacy commissioner. We have created two.

Mr. Chairman: Excuse me. We would strike the words "and privacy commissioner" in subsection 52(2) and we would add the words, "commissioner or the assistant privacy commissioner," so it would now read, "assistant information commissioner or the assistant privacy commissioner."

Hon. Mr. Scott: Oh. Thank you, Mr. Chairman.

Mr. Chairman: Still teaching remedial reading after all these years. It is disgusting.

Hon. Mr. Scott: The question still becomes, why should the assistant privacy commissioner have access to it, but I will not worry about it.

Mr. Chairman: Oksy. He is not worried any more again.

All those in favour of the amendment? Any opposed?

Motion agreed to.

Section 52, as amended, agreed to.

Mr. Chairman: We have the notation that Mr. O'Connor wants to move section 52a.

On section 53:

Mr. Chairman: Mr. Bossy moves that subsection 53(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "a public" in the first line and inserting in lieu thereof "an."

Any problems with this?

Motion agreed to.

Section 53, as amended, agreed to.

On section 54:

Mr. Chairman: Mr. Warner moves that subsection 54(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "contain" in the first line and inserting in lieu thereof "provide a comprehensive review of the effectiveness of the act in providing access to information and protection of personal privacy including."

Motion agreed to.

Mr. Chairman: Mr. Warner moves that clause 54(2)(a) of the bill, as reprinted to show amendments proposed by the Attorney General, be struck out and the following substituted therefor:

"(a) a report on the nature of applications and their disposal during the previous year."

Hon. Mr. Scott: We are back where we were last time. We do not know what you want by this. Let us remember we are dealing with the commissioner's report. He will not have received any applications. They are received by heads. He will have received appeals. If by "applications" you mean appeals, a report on the nature of appeals and their disposal during the year, that has already been said in clause (a).

If you mean "applications," he is not going to have that although he will have the reports that the heads are obliged to make. But why do it twice? If the heads have reported on the number of applications, the commissioner is not going to know anything about them. They will come to him.

Mr. Chairman: If I may state the obvious, I think the proposal is to provide an annual report that is comprehensive. It includes the appeals and some idea of how many people tried to use this bill.

Hon. Mr. Scott: The problem is the commissioner is not going to know how many people used the bill. He will be able to read the heads' reports. They each have to prepare a report that will be public that will say 4,000 people applied to the Attorney General for information, but he will not know anything about that.

Mr. Chairman: He can ask around.

Mr. Martel: Wait a minute. It says, "The commissioner shall make an annual report." Let him draw up a proper report so people understand what the hell is going on with the act.

Hon. Mr. Scott: And so he should, and that is why we have accepted the amendment you have made about a comprehensive report, but now what you are asking for is not a count of the applications; you are asking for "a report on the nature of applications." The only person who will know the nature of the applications made to the Ministry of the Attorney General is the Ministry of the Attorney General, and in our report we will tell you the nature of the applications. We will receive 4,000. The commissioner will have two appeals from our decision and he will report on those appeals, but he could not tell you anything about the applications that these 134 institutions receive.

Mr. Sterling: Did we amend section 34(1) in terms of what the heads had to do with their reports? Do you have notes on it? Did we amend section 34(1)?

Mr. McCann: I do not believe so.

Hon. Mr. Scott: Subsection 1 does make the head report on "(a) the number of requests under this act for access to records made to the institution."

Mr. Sterling: I agree with your comments on clause 54(2)(a). I wanted--and I guess I just admitted it when we were going through it; there was not much action going on during that section--to add under section 34(1) that, "A head shall make an annual report, in accordance with subsection (2), to the commissioner and to the Legislative Assembly." That was not done?

Ms. Baldwin: That was not done.

Mr. Sterling: That is what Ms. Gigantes wants, I think.

Hon. Mr. Scott: Another 80 reports to be made to the Legislature. They are going to be made to the commissioner.

Mr. Chairman: I guess the question for the committee to decide is--you just passed an amendment asking for a comprehensive annual report. Is there a need to spell that out a bit more?

Mr. Sterling: Could I ask another question? In relation to your section, because subsection 54(2) refers to subsection 46(1), does that include everything that the commissioner--I put it this way: Would he be required to report every public access point under section 46(1)? What about a third-party reaction to a--

Mr. McCann: Yes, it would include the third parties. It would include all the appeals of a head's decision that are made including the appeal by a third party to prevent disclosure of a document. There would be other things that would come to the commissioner. For example, members of the public may complain to the commissioner about the way an institution is handling personal information or whatever it might be. The commissioner will clearly be obligated to report on all that under section 54 as well.

1530

Mr. Chairman: Is there any further debate on the amendment? All those in favour? All those opposed?

Motion negatived.

Section 54, as amended, agreed to.

Section 55 agreed to.

On section 56:

Mr. Chairman: Are there any amendments members wish to place on section 56?

Mr. O'Connor: We have been through that debate--the question of opting out as opposed to opting in--and it was defeated earlier on, so I withdraw that amendment.

Mr. Chairman: There was one small amendment to clause 56(f) that did carry previously with some revision. I do not know if you want to bother with it. It amends the clause "by striking out 'subsection 37(1)' in the second line and inserting in lieu thereof 'subsections 37(1) and 39(2).'" That does not make a lot of sense to me.

Hon. Mr. Scott: Is that clause 56(f)? We have already removed subsection 39(2).

Mr. Chairman: All right. So we will leave that one alone. Are there any amendments to section 56?

Mr. Warner: I seek the direction of the chair. We discussed earlier this schedule 3 part that belongs with the regulations, along with schedules 1 and 2. Where does that fit in? Is this the appropriate section?

Mr. Chairman: I am going to ask the Attorney General to give you some comments on how he would prefer to proceed and then you can make up your own mind.

Hon. Mr. Scott: As passed, section 2 of the bill contemplates that the executive council will, by regulation, designate the agencies. We have told you that our initial position and our undertaking to the committee was that we would designate what are called the schedule 1 and 2 agencies plus the Workers' Compensation Board.

Mr. Warner: Right.

Hon. Mr. Scott: I have heard it from you that you would like us to designate the balance of the schedule 3 agencies. I have asked you on bended knee to take a look at that list in the hope that there are some institutions that you would not want designated. If you will let me know which ones you want designated, I will make a recommendation to the executive council.

Mr. Warner: Okay, could I then very briefly--

Hon. Mr. Scott: Just to clear up what we have this morning, the

universities are not set out on schedule 3. Colleges and universities refers to George Brown College and those institutions.

Mr. Warner: The universities are not on schedule 3 and it is a matter to be dealt with separately.

Hon. Mr. Scott: Then let us move the universities because the calls I am getting now are more than I can bear.

Mr. Chairman: Oh, good. Maybe we should just leave it for a while.

Mr. Martel: We are too.

Mr. Warner: It is nice to know someone else gets phone calls.

Hon. Mr. Scott: In an hour, I start blaming it on the NDP and the Tories.

Mr. Chairman: What do you mean "in an hour"? Give me a break.

You have heard the explanation from the Attorney General. There was a message there.

Mr. Warner: Right, so what I would indicate is that I have certainly looked the matter over and thought about removing the Thunder Bay ski jump, etc., but what I recall is that every one of these is reviewed by a committee of this Legislature, the standing committee on government agencies, and it seemed a little incongruous to me that the politicians can be in receipt of information on the Thunder Bay ski jump or all of the other agencies, boards and commissions, but we would exclude members of the general public from receiving the same information on their own.

Hon. Mr. Scott: No, I am saying, you tell me which of the--

Mr. Warner: All of them, for that reason.

Hon. Mr. Scott: You want them all. I understand.

Mr. Warner: Yes.

Hon. Mr. Scott: The thing that concerns me is, you will understand that to comply with this act involves a significant amount of work and deployment of staff for an agency. Do you really need to know that the Thunder Bay ski jump is going to be subject to the freedom-of-information act? If you do, by all means, but is there any limit to our curiosity here?

Mr. Martel: Probably not.

Hon. Mr. Scott: Maybe not.

Mr. Chairman: Ask a stupid question.

Mr. O'Connor: I would like to take exception and try and set the record straight with regard to one thing you said about the employment of significant amounts of staff, cost and so forth. In the average agency, whatever size it is, a couple dozen people, a local housing authority, they are not going to be hiring additional staff. They are going to appoint one person who is going to field about three applications a year, if that, for

some information which will in the normal course of events probably be dispensed. What experience can you draw on to tell us about what staff will have to be created?

Hon. Mr. Scott: You have not read the reports that indicate and we are encouraged by this, that in fact thousands and thousands of applications will be made annually and millions and millions of pieces of information will be released to ministries.

Mr. O'Connor: To certain ministries and particularly yours, but I am suggesting the average agency, board and commission, and particularly schedule 3, are not going to receive the records.

Hon. Mr. Scott: No, to private citizens. In the United States they have found that the biggest users are not private citizens, but are rather businesses and newspapers. The newspapers already are lined up to get stuff about the last 42 years. Their requests will not be exhausted for next to a generation. Can you not imagine them asking about Jim Snow and asking about Russell Ramsay and all those people?

Mr. O'Connor: Of ministries, yes.

Mr. Chairman: This is real helpful. Do we have any amendments on section 56?

Hon. Mr. Scott: Millions of pages.

Mr. Chairman: No, we do not.

Section 56 agreed to.

On section 57:

Mr. Chairman: Do I have an amendment on section 57?

Mr. Sterling: Yes. I have an amendment which I put forward and it seemed to have the consent of the Attorney General at that time. Legislative counsel redrafted the amendment. She put into the existing section basically the same words. I had it in typing. Unfortunately it got buried in the pile. I did not expect to get this far and it has not been reproduced. I think I can read it and everybody will understand.

Hon. Mr. Scott: There were two changes.

Mr. Sterling: Yes.

Mr. Chairman: Perhaps if he reads something on the record.

Mr. Sterling moves that subsection 57(1) of the bill as reprinted to show amendments proposed by the Attorney General be amended by striking out, "or" at the end of clause (b) and adding thereto the following clauses:

(d) obstructs the commissioner in the performance of his or her functions under this act;

(e) makes a false statement to mislead or attempt to mislead the commissioner in the performance of his or her functions under this act; or

(f) fails to comply with an order of the commissioner.

Hon. Mr. Scott: Can I make two observations. Can I ask Mr. Sterling, so it will read properly, to consider adding before (d), (e) and (f) or after (d), (e) and (f) but before the body of the section, the words, "wilfully" so it will read as (a) and (b) do? It will be, "wilfully obstruct the commissioner in the performance..."

Mr. Sterling: That is fine.

Hon. Mr. Scott: That is required. The second thing we talked about is that charges will only be laid with the permission of the Attorney General. I do not have any wording for that but it is a standard form and perhaps legislative counsel can add a 57(2) that will make that plain.

Mr. O'Connor: Subsection 57(2) is the penalty section. It would be subsection 57(3). I believe there should be an amendment to the penalty to raise the \$2,000 to \$5,000.

Mr. Chairman: Is that part of your amendment?

Mr. Sterling: That will be my next amendment, when I am amending subsection 57(2).

Mr. Chairman: I think we have the gist of it. There were some wording changes that we are drafting now, but essentially we would add the sections. You will find it in your book under a previous amendment put by Mr. Sterling. You would just simply change the lettering to (d), (e) and (f). You would add the words, "wilfully." The other difference is that he wants to keep in his amendment that the fine would be not more than \$5,000.

1540

Mr. Sterling: What I did in this amendment to subsection 57(1) was to add three offences. If we could vote on them, I will deal with the penalty after that.

Mr. Chairman: Will you read the amendment that you want before the committee?

Mr. Sterling: I move that subsection 57(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "or" at the end of clause (b) and by adding thereto the following clauses:

"(d) wilfully obstruct the commissioner in the performance of his or her functions under this act;

"(e) wilfully make a false statement to, mislead or attempt to mislead the commissioner in the performance of his or her functions under this act; or

"(f) wilfully fail to comply with an order of the commissioner."

Mr. Chairman: Is the amendment understood? There may be some drafting that should be done. Are we in agreement with the amendment? Any opposed? That amendment will carry, but give me permission to draft it a little. I suspect your lettering system might be out of whack. Do you want to go on to the next stage of this amendment?

Mr. Chairman: Mr. Sterling moves that subsection 57(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "2,000" in the third line and inserting in lieu thereof "\$5,000."

That is fairly straightforward. Is there any debate on the matter? All those in favour?

All those opposed?

Motion agreed to.

Mr. Chairman: Do you have another part that you want to move?

Mr. Sterling: I will wait for legislative counsel because I presume she wants to give me a subsection 57(3). Can we put down section 57 and come back to it?

Mr. Chairman: I think we have the wording.

Mr. Sterling moves that section 57 of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

(3) A prosecution shall not be commenced under clauses 57(1)(d), (e) or (f) without the consent of the Attorney General.

Is there any debate on the matter? All those in favour?

All those opposed?

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 57?

Shall section 57, as amended, carry?

Section 57, as amended, agreed to.

On section 58:

Mr. Chairman: Mr. O'Connor moves that subsection 58(1) of the bill be amended by inserting after "head" in the second line "other than the duty to disclose a record under subsection 11(1)."

Mr. O'Connor: If I may speak to that--

Mr. Chairman: Let me try to identify it for members of the committee. Is this the one that you moved previously in the first draft?

Mr. O'Connor: Yes, we did amend subsection 11(1) in some particulars, but this amendment could still apply to the subsection 11(1) that remains in the bill. The same rationale would apply.

Mr. Chairman: This smells significantly like the one that had no support in the first runthrough. Is that right? I want to make sure I have the right one.

Mr. O'Connor: I do not think we discussed this in terms of support or otherwise. Let me give a brief rationale for it. Subsection 11(1) is the duty-to-disclose section where, generally, we would be dealing with emergency situations, whereas section 11 still reads, "...reveals a grave environmental, health or safety hazard to the public." I am amending it to indicate that although, as section 58 indicates, in all other sections that the head may delegate power to others in his ministry or in his agency, board or commission to carry out some of his duties in the case of the emergencies contemplated under subsection 11(1), the minister himself should deal with it.

That is, we are dealing with--the term is still there--"grave environmental, health or safety" situations where I believe the minister should not be permitted to delegate. They are likely to be politically sensitive, and he may have that inclination to do so and should not be allowed to do so. Because they are as serious as they are and involve the duty to disclose, the minister himself should be the one who does it.

Hon. Mr. Scott: May I say regretfully that I, on behalf of the government, oppose this amendment. In those cases where a disclosure is obliged to be made under section 11, where there is a grave environmental or safety hazard, what we contemplate there, you will recall, is the speediest disclosure if you are going to deal with a grave environmental or safety hazard.

This proposal says the disclosure can only be made by the minister and cannot be delegated. If the information is in Mr. Kwinter's department today, I am sorry, but it is not going to be able to be released until some time next week because he is in Europe. It seems to me the importance of getting that kind of information out quickly is the very reason the minister should be able to delegate under subsection 11(1), because in order to release this information about grave environmental hazards, bureaucrats are going to have to be looking for the minister. They will not be able to do it themselves.

Mr. Chairman: Any further debate on the amendment? Shall the amendment carry? Those in favour?

Those opposed?

Motion negatived.

Mr. Chairman: The score was three and a half to two.

Mr. O'Connor: They did not vote. You indicated a vote and they did not vote.

Hon. Mr. Scott: He knows about freedom of information.

Mr. Chairman: Are there other amendments to section 58?

Mr. Warner: There is another one. I have a notation here that was accepted all the way around.

Mr. Chairman: I should point out to you before we leave this section, there was agreement on subsection 58a(2), which is the next section, not this one.

Shall section 58 carry?

Section 58 agreed to.

On section 58a:

Mr. Chairman: There was an amendment in our first draft. As a matter of fact, I had one to this section that carried. It is in your book as an amendment to subsection 58a(2).

Mr. Warner moves that subsection 58a(2) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by striking out "immediately" in the fourth line.

Mr. Chairman: Any further debate on the matter? Those in favour of the amendment? Five.

Those opposed? Five.

Motion negatived.

Mr. Chairman: Any further amendments to section 58a? Shall section 58a carry?

Section 58a agreed to.

Section 59 agreed to.

On section 59a:

Mr. Chairman: We have an amendment to section 59a, which is the next one.

Mr. Bossy moves that section 59a of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

"(3) This act does not apply to notes prepared by or for a person presiding in a proceeding in a court of Ontario if those notes are prepared for that person's personal use in connection with the proceeding."

Any further debate on the amendment? Those in favour?

Those opposed?

Motion agreed to.

Mr. Chairman: Any further amendments?

Mr. Bossy: Yes, section 59b.

1550

Mr. Chairman: Hold on for a minute, please. We have cleared section 59 and section 59a. Where does section 59b go? You are adding a new section 59b. Okay.

Mr. Bossy: That is what it says.

Mr. Chairman: Mr. Bossy moves that the bill, as reprinted to show

amendments proposed by the Attorney General, be amended by adding thereto the following section:

"59b. Any right or power conferred on an individual by this act may be exercised,

"(a) where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

"(b) where a committee has been appointed for the individual or where the public trustee has become the individual's committee, by the committee; and

"(c) where the individual is less than 16 years of age, by a person who has lawful custody of the individual."

I remind you that we had agreement on this one as we went through the first time. Is there any need for further debate? Shall the amendment carry?

Motion agreed to.

Section 59a agreed to.

Section 59b agreed to.

On section 60:

Mr. Chairman: Are there amendments to section 60?

Mr. Sterling: Yes.

Mr. Chairman: Mr. Sterling moves that subsections 60(2) and 60(3) be deleted and the following substituted therefor:

"This act is subject to any provision in any other act providing for confidentiality of or access to information or records, except that where such confidentiality or access is subject to a discretion that is not subject to specific criteria, the discretion shall be exercised in accordance with the provisions of this act."

Hon. Mr. Scott: Did we have notice on this?

Mr. Chairman: I have been applying the two-hour rule on this.

Mr. Sterling: My concern with the existing section is that I do not know whether Mr. McCann has been able to have the time to identify the number of acts that have confidentiality provisions in them.

Hon. Mr. Scott: I think there are about 100.

Mr. Sterling: It is presumed by me that in each of those 100 cases there was some consideration by the government of the day and the Legislature as to those confidentiality provisions. I do not know whether a two-year time frame is realistic in terms of amending all the legislation. I would also presume that when legislators dealt with those individual pieces of information as they went along, they were able to turn their minds to the particular confidentiality provisions in a more concentrated manner than we have been able to foresee in this particular act.

I guess the bottom line is that I do not think the Legislative Assembly is going to consider and deal with 100 pieces of legislation in two years. It may not be necessary to deal with all of them, but this particular section says that if you do not amend the adoption legislation to exclude it, this legislation will overtake the confidentiality provisions of the adoption act. Am I not correct?

Hon. Mr. Scott: Yes. I am obliged on behalf of the government to oppose this perpetuation of confidentiality. If Mr. O'Connor was not in your party and was in the opposite party, he would immediately say, "You are supposed to be the champion of freedom of information and disclosure--

Mr. O'Connor: You are; you told us you are.

Hon. Mr. Scott: --and you are passing this amendment which is going to keep all this stuff in 100 Tory acts confidential." That is what Mr. O'Connor would say to you if he belonged to a different party, but he is being discreet.

The intent of the act is to impose on the committee and the government the obligation of looking at the statutes and saying, "Either we will amend them or in two years this act will govern them all." It seems to me that is practical.

Mr. Martel: For two years, you just sit in the bush and do nothing, and everything remains confidential with respect to 100 pieces of legislation. You are doing exactly what you accused my friend of doing. You do not have to do a thing for two years.

Hon. Mr. Scott: No, that is not so. If we do nothing in two years, this act governs.

Mr. Martel: Yes, but for two years everything prevails.

Hon. Mr. Scott: No, he is doing it the other way around.

Mr. Martel: You are both achieving the same end; neither one of you is going to give information for two years.

Hon. Mr. Scott: No.

Mr. Martel: Do not try to con me on this one.

Mr. O'Connor: Con him on everything else.

Mr. Martel: Both of you are doing exactly the same thing from two different points of view. You are saying exactly the same thing: for two years all of this stuff remains confidential.

Hon. Mr. Scott: You are going to have to make a choice between the government amendment and this amendment.

Mr. Martel: Maybe I will hoist them both.

Hon. Mr. Scott: You cannot hoist them both; you have to do one or the other.

Mr. Martel: Just exclude it, and then they come under the provisions of the act.

Hon. Mr. Scott: Look, let us not get upset. You have to do one or the other. What the Conservative--

Mr. Martel: Block it one way or block it the other way. What is the difference?

Hon. Mr. Scott: You are a miracle.

Mr. Chairman: There are those of us who have noted that before. Mr. Warner, did you want to speak to this amendment? Obviously not. Is there any further debate on Mr. Sterling's amendment?

Mr. Martel: They are moving a winless agreement. They have an agreement with the federal government.

Mr. Sterling: There are safeguards built in.

Mr. Martel: There are limits. There is the freedom of information with respect to industrial components that the Minister of Labour is waiting to move on. Who is going to do that?

Hon. Mr. Scott: I do not know what you are talking about.

Mr. Sterling: Surely that will be dealt with--

Mr. Martel: I would like to know information with respect to--

Mr. Chairman: Hold it.

Mr. Sterling: I withdraw this amendment.

Mr. Chairman: That is the way to deal with these things.

Are there any further amendments to section 60?

Hon. Mr. Scott: Maybe Mr. Martel wants to vote against it.

Mr. Chairman: Hold on a minute. Are there any further amendments to section 60?

Mr. Martel: Just a second. Hang on for a second. Do not shout at me.

Mr. Chairman: I am hanging on.

Mr. Martel: Keep on hanging on.

Mr. Chairmen: Do you have an amendment to section 60?

Mr. Martel: I might move one. I might move to delete both sections.

Mr. Chairman: I am waiting for you to move something. Shut up or put up, one or the other. Do you have an amendment to section 60?

Mr. Warner: Perhaps the chair could be helpful.

Mr. Martel: No, heaven forbid.

Mr. Chairman: I would have been at a time a few moments ago when you

were speaking one at a time and when it was not girls' night. If you have an amendment, move it. If you need some help from the chair, ask me for help. What is it?

Mr. Warner: I like subsection 2 but I want this act to come into effect on the day it is proclaimed, so I do not want subsection 3 as it is printed at present. The choice then, I think, is to remove subsection 3, call for a separate vote and vote against it--

Mr. Chairman: Right, you can do that.

Mr. Warner: --or to have it reworded to say that it takes effect on the day of proclamation. Which is the preferred procedural route?

Mr. Chairman: Procedurally, if you simply want to go through and vote against subsection 3, it seems to me you have accomplished what you want.

Mr. Martel: Now the champion is going to vote with us.

Mr. Warner: I will ask the chair to call separate votes on subsections 1, 2 and 3.

Mr. Chairman: Sure.

Hon. Mr. Scott: Can I ask a question of the honourable member? If you are going to vote against subsection 3, which I understand is your intent, do you know what is going to happen? Do you know what you are going to do? In effect, you are going to repeal the provisions in anywhere between 75 and 100 acts and you do not even know the names of them. I cannot believe that is a responsible exercise.

Mr. Martel: You have 12 months to do it.

Mr. Chairman: Is there further debate, as they say?

Mr. Martel: Wow, power.

Mr. Warner: Another two years of not being able to obtain justice.

Interjection: That accord scares the daylights out of me.

Mr. Chairman: Only a damn fool would sign that.

Mr. Sterling: I would have been very prone to supporting the Attorney General, but his previous arguments to let this information out were so compelling that I am tempted to vote in favour of the New Democratic Party motion on this one.

Hon. Mr. Scott: It is tough, Normie; it is tough.

Mr. Chairman: Are you ready for the question?

Hon. Mr. Scott: You have to come to grips with these things.

Mr. Chairman: I have had a request to call this one section by section. I will be happy to do that.

Shall subsection 60(1) carry? Carried.

Shall subsection 60(2) carry? Carried.

Shall subsection 60(3) carry?

Interjections: No.

Mr. Chairman: Those in favour of subsection 3 being part of the bill, please say "aye." Those opposed? It carries.

Hon. Mr. Scott: That is what we call a freebie, O'Connor. Count the house and then hold up your hand.

Section 60 agreed to.

Sections 61 through 64, inclusive, agreed to.

On section 65:

Mr. Chairman: Is there an amendment to section 65?

Mr. Martel: It is gone, no matter what it is. Just on principle.

Mr. Sterling: I would like to ask a question in regard to the proclamation section. Does this permit the government to proclaim different sections at different times?

Mr. Chairman: The answer to that, I think, is always yes.

Hon. Mr. Scott: I do not know the answer to that question, but I take your view, Mr. Chairman.

Mr. Chairman: The answer is yes. I seem to recall even other governments doing that kind of thing.

Ms. Baldwin: Section 5 of the Statutes Act makes it possible to do that.

Hon. Mr. Scott: I promise we will not do a spills bill on this one.

Mr. Chairman: Do you have an amendment to move on section 65?

Mr. Sterling: No, I was asking the Attorney General when this government intends to proclaim this act?

Hon. Mr. Scott: As soon as we possibly can.

Mr. Sterling: Then you have no objection to my amendment?

Hon. Mr. Scott: I do.

Mr. Sterling: Why?

Hon. Mr. Scott: Because.

Mr. Martel: It is not going to carry anyway; just on sheer principle.

Hon. Mr. Scott: First, we have not seen your amendment.

Mr. Martel: I do not even want to see it.

Mr. Sterling: I have it right here.

Hon. Mr. Scott: I have not seen it. It may be right there.

Mr. Chairman: Any further debate on the nonamendment that is not before us? Are there any amendments to section 65?

Mr. Sterling moves that section 65 of the bill, as reprinted to show amendments by the Attorney General, be struck out and the following substituted therefor:

"65. This act comes into force the day it receives royal assent."

Hon. Mr. Scott: That is absolutely unacceptable. We would not have the system working. We have not got a commissioner appointed. We have not got a wide variety of mechanisms. That is just to destroy the efficacy of the act. I simply cannot accept that.

Mr. Martel: I agree with you.

Hon. Mr. Scott: You are making more sense every minute.

Mr. Chairman: Any further debate on the amendment?

Mr. Sterling: Would the Attorney General then, as a compromise, because of the great support I have in committee today, name a date?

Hon. Mr. Scott: No.

Mr. Sterling: So you will not even name the date when it will be proclaimed?

Hon. Mr. Scott: There are the following problems. We have not appointed a commissioner. That is not a decision I can take, though I can assure you I will be making a recommendation to the Premier (Mr. Peterson) and the executive council as quickly as possible.

Apart from that, the commissioner will not have appointed his staff, which he will have to do, got his system in operation, got an office, done all the things that are going to be required before the system works. What we want to do is put the system in place as quickly as we can and make it workable as quickly as we can, but to name a date now would be just absurd.

Mr. Martel: Why do you not try for the same time as the spills bill?

Hon. Mr. Scott: No, I make one promise, that we will do better than that by about six and a half years.

Mr. O'Connor: Is the situation similar to the QC situation, where you made a nice announcement two years ago and have done absolutely nothing about it?

Mr. Chairman: Why is there music coming into this room all of a sudden?

Mr. O'Connor: There are many other so-called proposals--

Mr. Chairman: Is there any actual further debate on the amendment?

Mr. O'Connor: --and there is no intention of following up on them.

Mr. Chairman: The amendment has been withdrawn.

Section 65 agreed to.

Section 66 agreed to.

Mr. Chairman: I want to point out that you have two sections that you have stood down. There is an amendment by Mr. Martel to subsection 50(1a), and Mr. O'Connor has provided us with notice that he would like to move an amendment to a new section 52a. Is there any other business that needs to be transacted?

Mr. Warner: Yes. You will recall, we returned to section 2 of the bill and the definition of "institution." Yesterday we dealt with, including municipalities, a three-year notice period. I have two motions under that "institution" section.

Mr. Chairman: What amendments are you talking about? Do you have them in writing? Have we seen them?

Mr. Warner: No.

Mr. Chairman: Then I am going to ask you to set that over, unless there is some direction from the committee. We have stood down two sections. We have indicated that we would be prepared to consider that, and I would prefer to do that.

Mr. Martel: The Attorney General wanted it done today.

Mr. Chairman: I do not care what he wants. If it is the decision of the committee to do that, fine, but it is late in the day, and I am starting to lose members here. Do you want to deal with this now?

Mr. Warner: We can deal with it later. That is fine.

Hon. Mr. Scott: Mr. Chairman, can I make a request?

Mr. Chairman: Yes.

Hon. Mr. Scott: I do not care. I leave it entirely up to the committee whether the motions are dealt with today. Could we have notice of them to know what they are, so that we will know next day exactly what we have to deal with and no more?

Mr. Chairman: I was going to suggest that what you do, Mr. Warner, is to read them into the record now, and that will constitute notice for us. We will then have three matters to deal with. The first occasion I know of when we could do that is that I have been told that when the House resumes, we will be able to ask for additional committee time. It seems to me we would have perhaps three items on our agenda to wrap this bill up and we could do that in one afternoon, seeing that we have had principle arguments on two of them. Do you want to give us notice first?

Mr. Warner: The first would be that the definition of "institution"

in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following clause, "(ab) any university in Ontario."

The second would add that to what we did yesterday with the municipalities, namely, it would take effect three years hence. That amendment would be to subsection 2(3) of the bill and would strike out clause (aa) in the first line and insert in lieu thereof clauses (aa) and (ab), so that in practical terms, the universities would be part of the freedom-of-information legislation.

Mr. Chairman: Just read the motion. Do not argue it.

Mr. Warner: That is notice. Obviously, I will have it properly typed.

The other amendment--as the Attorney General had requested, and I am trying to carry on the traditional heritage of my family of being calm and reasonable in all circumstances. I am not asking for--

Mr. Chairman: It is starting to pile up here, Warner. Get your amendment on.

Mr. Warner: That these schedule 3 agencies be added to the regulations: the Royal Ontario Museum, the colleges of applied arts and technology boards of governors, the Ontario Institute for Studies in Education, the Alcoholism and Drug Addiction Research Foundation, boards of community psychiatric hospitals, the Clarke Institute of Psychiatry, district health councils, local housing authorities, the Workers' Compensation Board, the Trillium Foundation board of directors, the Ontario Municipal Employees Retirement Board and the Teachers' Superannuation Commission.

You will note that I left the ski jump off the list.

Hon. Mr. Scott: I thank Mr. Warner for that, and we will do that. We are opposed to the inclusion of universities in this bill, but it will be up to the opposition parties to decide whether that is going to pass, because we do not have a majority in this Legislature.

Mr. Chairman: Any other business? I point out that the only way we can continue with this bill will be after the House resumes or does whatever it does.

The committee is adjourned until next Tuesday at 10 a.m. when we will be dealing with Mr. Gillies's referral.

The committee adjourned at 4:10 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

TUESDAY, APRIL 7, 1987

Morning Sitting

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Treleaven

Poirier, J. (Prescott-Russell L) for Mr. Morin

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, April 7, 1987

The committee met at 10:23 a.m. in room 228.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: We have a quorum. I apologize to those of you who were late this morning. I want to report that, as a last resort, Metro works department shut down Wellesley Street this morning.

What we have this morning is an attempt to put together a chronology of events and to put before you what, I guess, would be the critical question on the matter of the service of documents on Mr. Gillies. I would like to try to do this in two or three pieces. First, I think it would be useful if we could determine the events and get general agreement on them. I have had just a quick look through the chronology of events prepared by Mr. Eichmanis and it seems to me that there is not a lot of question that that is what happened in those instances.

Second, as I said at the end of our hearings on the matter, I think the political judgement call is one that cannot be made by staff and has to be made by the members. Essentially, the staff can prepare documents outlining what happened on what date and can attempt to determine for you what I guess you would call the critical questions in terms of whether there was a violation of privilege.

If you want more than that, I am afraid we are dependent on you as members to write that story and then we will see how many other members agree with you on that. I do not think it would serve anybody's purpose to have three dissenting opinions here, but that may be the case.

If we can, I would like to go through the chronology of events first. Then perhaps we could go to the document Smirle has prepared on the service of the documents and whether that constitutes privilege. Finally, if there is a desire on the part of some committee members to go further than that--that is, to provide some kind of judgement call on anybody's actions in the matter--I would ask you to try to put that together, perhaps some time later today or tomorrow, and present that to the committee and we will deliberate upon how much of it we care to include in our report on the matter.

Let us go to the first document which is the chronology of events. I do not see a great deal that one could argue with in that, but I would be open to any comments anybody has on it. Are there any?

Mr. Martel: Let me ask a question just before we start. I was under the impression we were going to get a document laid before us. Was it just the chronology of events that we were going to get laid before us?

Mr. Chairman: Yes.

Mr. Turner: Yes, terrible.

Mr. Chairman: Just to explain a little to the committee, I am really reluctant to ask anybody who works for this committee to write a political opinion. If you want to do that, that is your job. What they can do is what they have done. The chronology of events and the parameters of privilege can be laid in front of you. I would think you would want those two aspects included in any report that you would want to make, but any kind of statement that you would want to make beyond that it is up to the members to write. It is not up to staff. I suppose we can assist them in putting words together, but that is about as far as I would care to see the staff go.

Is there any problem with the events as outlined by John?

Mr. Mancini: Since we just got the document five minutes ago and it is six pages, it may take more than two minutes to decide whether or not we--

Mr. Chairman: Yes, but you have had 23 minutes to look at it.

Mr. Mancini: I do not think we have had 23 minutes.

Mr. Bossy: You were absent for 22 of those.

Mr. Chairman: Do you want just to go through that?

Mr. Mancini: Yes, let us do that.

Mr. Chairman: Okay.

On October 27, "Gillies raised the Huang and Danczkay matter" and did a press release on it.

On October 28, Gillies again raises the matter. In this time period, Fleischmann retained the law firm and asked that it initiate a libel action.

On October 29, he raised another question.

On October 30, he gave notice in the standing committee on public accounts that he would bring a motion to instigate an inquiry.

You might also note that Mr. Lederman took a look at the question of the propriety of serving documents on a member in his office.

I remind you that as part of our deliberations, you should not be unmindful of the fact that the legal firm has given an opinion and used some precedents from previous opinions submitted to this committee, that it is proper to be served with documents in your office and in the building. There are some who might question that, but that is a legal opinion that has been formally submitted to the committee by this law firm and it has quoted as a precedent some previous advice we had.

On November 5, Lyn Artmont stated that she had received a telephone call. Here, again, we--

Mr. Sterling: Are we up to November 5 already?

Mr. Chairman: Yes.

Mr. Sterling: I am sorry; I am just reading this through. On October 28, the statement you have here reads, "January 27, 1987, therefore became the

last day available for the issuance of a statement of claim." I think that bald statement does not--it was part of the evidence that the service of the statement of claim did not have to occur until July 1987. I think that is a significant fact in terms of when the service took place, that it was not necessary it take place any time during that period or that month. It could have waited until the hearings were over, etc.

The issuance deals with filing it in a court office and initiating the action there. That is the issuance and there was evidence given during the hearing to that effect.

1030

Mr. Chairman: Do you agree with that?

Mr. Warner: The issuance had to be--

Mr. Sterling: That means going down to the court office and filing it.

Mr. Warner: Do you want to leave that in and then add another line?

Mr. Sterling: Yes. "However, the statement of claim did not have to be"--

Mr. Chairman: Are we agreed on this?

Mr. Mancini: How is Mr. Sterling trying to (inaudible)? That is what I want to know.

Mr. Chairman: Well, he is just being--

Mr. Sterling: No, it makes--

Mr. Chairman: John says and Smirle confirms that he may actually be correct.

Mr. Mancini: That is dangerous.

Mr. Warner: Norm is right?

Mr. Martel: Is that a first?

Mr. Chairman: I did not say he was right; I said he possibly could be correct in his assumptions.

Mr. Warner: It is the first time in 10 years.

Mr. Chairman: Anybody can luck out once. Is there anything else?

Mr. Mancini: The only thing I would add is that if we are going to be put in that sentence, it would also have to include following that sentence--as far as I can remember the testimony--that the lawyers were instructed to proceed forthwith, meaning immediately.

If the issuance had to be done by January 27, and Mr. Sterling now says that they did not have to be hand-delivered until some time in July or something like that, the evidence we heard was that they were instructed to

proceed forthwith. Whether it had to be done in July or whether it had to be done at some other time is irrelevant because the issuance was done. It would appear to be normal that once you issue the writ, then you would proceed. I think that would be common sense.

Mr. Chairman: Is there argument about that fact?

Mr. Bossy: It depends on the lawyer you have.

Mr. Chairman: What we will do is take note of the two points, research them carefully and see whether they can be added into the facts of the case.

Mr. Mancini: We can go back to square one if Mr. Sterling wants.

Mr. Chairman: On November 5, Ms. Artmont stated that "she received a telephone call from someone claiming to be a journalist, but who, she believed, was from a law firm." In either case, not an honourable person.

Mr. Mancini: There are a lot of people up in the press gallery who claim to be journalists. We should maybe write that down. There was that bearded fellow in the room this morning, or maybe two of them.

Mr. Chairman: Okay. She got the telephone call that morning. There was some evidence presented that, "Mr. Gillies and Ms. Artmont stated that they heard that notice of the libel action against them had been posted in the press gallery." There was some confusion as to who actually posted that.

"Ms. Artmont stated that she was called out of question period in the afternoon of November 5, and was told that the PC caucus had been served with a letter of intent from Mr. Fleischmann. Subsequently, she was handed a 'letter' by a young man and was asked to take a 'letter' for Mr. Gillies.

After question period, Mr. Gillies stated that "a lady approached him and handed him a 'letter of intent' from Mr. Fleischmann's solicitors. Mr. Gillies understood the letter provided him with an opportunity to retract some points before legal action was commenced.

"Mr. Lederman stated that an articling student from the firm of Stikeman, Elliott served the notices of libel on Ms. Artmont at her office in Queen's Park. Ms. Artmont accepted the notice of libel on behalf of Mr. Gillies. Mr. Lederman stated that the firm of Stikeman, Elliott did not post a notice with respect to the serving of documents in the Queen's Park press gallery, nor was the notice served on Mr. Gillies personally."

What you should note from this date is that this is the first serving of documents within the premises. If I could do a little personal comment on the bottom one, to my knowledge the normal process is that anything that goes into the press gallery is posted by the stewards in the gallery. In other words, if you have a press release, you take it up and give it to one of the stewards in the gallery and he will post it on the bulletin board up there. If you have a piece of information, a press release or whatever, you take it in and lay it on the bar, so to speak. Jimmy or one of the guys will thence post it. It is not a particularly relevant point but this was the first day when documents were served.

Mr. Sterling: I believe there was evidence not only that Mr. Gillies

was served with this notice but also that the Progressive Conservative caucus was served with the same notice.

Mr. Chairman: I think that is stated in there.

Mr. Sterling: Is it in there?

Mr. Chairman: "Ms. Artmont stated that she was called out of question period in the afternoon of November 5, and was told that the PC caucus had been served with a letter of intent...."

Mr. Sterling: Sorry; I missed that.

Mr. Chairman: On November 6: "The standing committee on public accounts adopted Mr. Gillies's motion with respect to an inquiry into the Huang and Danczkay matter. The committee placed the matter on its agenda."

In January, "Mr. Gillies stated that after the Christmas holidays he said to Ms. Artmont with respect to the notice of libel: 'Gee, I wonder if we will ever hear anything more about that?'"

It is part of the record.

On January 13, "The steering committee of the standing committee on public accounts met in camera to schedule its meetings, including setting January 22, 1987 as the date when the committee would deal with the Huang and Danczkay matter."

On January 14, there was a statement of claim prepared by Stikeman, Elliott and issued in the Supreme Court.

On January 15, "Stikeman, Elliott contacted Metro Process Servers and instructed the firm to serve Mr. Gillies and Ms. Artmont with a statement of claim at their offices at Queen's Park."

If there is anything relevant there, it should be that the matter of serving documents was dealt with rather thoughtfully by the law firm, and it instructed the process servers as to the location where these people could be found and gave them instruction based on a legal opinion that it was legitimate to serve such documents on members at Queen's Park.

On January 16, Metro Process Servers received the statements of claim.

On January 19, "Ms. Artmont stated that on this date she received a telephone call from someone who was calling on behalf of Stikeman, Elliott. The man did not identify himself by name.

"Mr. Clamp stated that the date on which he called Ms. Artmont was January 20, 1987, but could have been the 19th.

"Ms. Artmont stated that the man said he had a 'letter to deliver' to Mr. Gillies and to her.

"Mr. Clamp stated that he used the term 'legal papers' or 'legal documents.'

"Ms. Artmont proceeded to inform the caller of Mr. Gillies's and her schedules for Monday, Tuesday, Wednesday and Thursday of that week.

"Mr. Clamp stated that during this conversation with Ms. Artmont he attempted to arrive at a mutually agreeable time when the statement of claim could be served."

There is still some confusion in the testimony as to exactly what terminology was used and exactly what kind of identification of the documents was made clear. I think this is probably about as good as you can get. It kind of gives you both sides of it.

"Mr. Clamp was particularly interested in their schedules for Wednesday and Thursday of that week. These were the days when Mr. Patton worked for the firm and thus would be able to serve the documents.

"Mr. Clamp arranged for Thursday morning, when Mr. Gillies and Ms. Artmont would be together in room 151, where they could be served personally at the same time.

"Mr. Clamp stated that 10:30...was the time that was set for the delivery or service of the documents, and asked whether the proceedings would be interrupted.

"According to Mr. Clamp, Ms. Artmont assured him there would be no interruption.

"Ms. Artmont stated that the caller (Mr. Clamp) did not wish 'to disturb Mr. Gillies,' but did not ask whether it would be appropriate to serve Mr. Gillies during the meeting of the public accounts committee. Nor, according to Ms. Artmont, did she advise the man that Mr. Gillies and she could be served during the meeting of the committee, nor was she asked whether this could be done.

"Mr. Clamp stated that Thursday was the best time for him to serve the documents; however, had he been told by Ms. Artmont that Thursday was inconvenient, he would have made other arrangements."

1040

January 22, 1987: "At about 9 a.m. Mr. Gillies called Ms. Artmont and asked her to take his file on Huang and Danczkay to the public accounts committee in room 151. During this conversation Ms. Artmont said, according to Mr. Gillies, that 'she had forgotten to tell me earlier in the week that somebody had phoned saying they were representing Stikeman, Elliott and they wanted to give me a hand-delivered letter some time this week.'

"Mr. Gillies then asked her if she knew what it was about and she said she did not, 'but we mused at the time as to whether, as we recalled, Stikeman, Elliott was Mr. Fleischmann's law firm and as to whether it was apropos of the same matter.'

"Ms. Artmont stated that she told Mr. Gillies that he might be getting a letter from a law firm, but did not recall naming the law firm. According to Ms. Artmont, Mr. Gillies was upset and asked questions with respect to the matter. Ms. Artmont then told Mr. Gillies: 'Do not worry about it, it is nothing. It is probably not Fleischmann, and if it is Fleischmann, they would not show up today and they certainly would not come into committee.'

"Ms. Artmont stated that she chose not to tell Mr. Gillies about the telephone conversation with Mr. Clamp earlier in the week because she did not think the matter was important.

"On Thursday morning, January 22, 1987, Mr. Patton was asked by Mr. Clamp to serve the statement of claim on Mr. Gillies and Ms. Artmont.

"Mr. Patton was given instructions to go to room 151 and ask for Lyn Artmont, who would direct him to Mr. Gillies.

"Both Mr. Patton and Ms. Artmont sat at the back of room 151 directly across from each other. When they looked at each other, according to Mr. Patton, Ms Artmont said, 'I believe you are looking for me?'

"At this point, Mr. Patton said he had a statement of claim to deliver to her and handed it to her.

"Mr. Patton then asked Ms. Artmont if Mr. Gillies was in the room, and she said yes and that she would get him.

"Ms. Artmont then went to the coffee table and talked to Mr. Gillies, who came over to Mr. Patton. When Mr. Patton gave Mr. Gillies the statement of claim, Mr. Gillies, according to Mr. Patton, said, 'I believe I cannot take the document.' However, Mr. Gillies did take the document.

"Mr. Gillies stated that on Thursday 22, 1987, he went to the public accounts committee in room 151. He was sitting at his place and then got up and went to the coffee table, at which time Ms. Artmont caught his eye and beckoned him to go to the back of the room.

"There he met Mr. Patton, who asked him if he were Mr. Gillies. Mr. Patton then said he had 'a document to serve to me and handed me this writ.' After looking at it quickly, Mr. Gillies said he was not sure whether he should accept the document, since it appeared to be a writ and Mr. Gillies 'was not sure whether, in fact, I should accept such a document because of a vague awareness that we all have of the provisions of the Legislative Assembly Act.'

"No one appeared to know what to do next. Mr. Gillies looked at Ms. Artmont, who suggested: 'Well, you have the papers in your hand now. Why not hang on to them until some sort of determination is made as to whether it was appropriate that they be served and whether, in fact, they were legally served or not?' Mr. Gillies kept the documents in his possession."

The first question is whether there is any argument over that as a statement of what happened. I want to say at the beginning that there is some conflict in that, conflict in the sense that there is not always agreement on exactly what happened at a given moment, but that is the best kind of cut-and-paste job we can do of testimony the committee heard, giving both sides of what happened. It seems to me that is a reasonable chronology of the events in that case.

If we can agree on that with one or two small additions, we have something to start with. Are there any comments on it?

Mr. Martel: Not on the document. Can I ask if Mr. Poirier is substituting for Mr. Callahan?

Mr. Peirier: I am substituting for somebody, but I am not sure about who.

Mr. Chairman: I believe Mr. Martel was being facetious there.

Interjection.

Mr. Chairman: Just trying to help you out.

Mr. Sterling: It is difficult to agree almost on a stated case when you have not had very much advance notice. I do not see any great objections to it, but I--

Mr. Chairman: I am not really asking anybody to adopt this. I am just trying to get a first run at whether there are significant facts that you want--

Mr. Turner: What it is, really, is a chronology of the evidence that was presented. I am willing to accept it as is, because it is a collation, if you will, of the evidence as given.

Mr. Sterling: The only problem that you face in this is that you may go to argument, where you might want to refer to other testimony which you consider significant, that is not in here, to buttress your side of the case.

Mr. Chairman: I think the best we can do on this, if you will forgive me, is to take a run through the papers that we have today, give you an opportunity to look at them, to examine them and to think about them. Tomorrow I think we could come back and, if you have additional information that you want inserted in it, that would be your opportunity, and have the argument.

If there are commentaries or judgements that you want to make, it would help us all if you would give us an indication of what they might be as early as possible. In other words, if you want to put a third section on here, which says somebody is guilty or not guilty, we could have that initial argument today, and tomorrow you could provide us with some indication in writing as to the direction you would like to go, and we could assist you in putting that together.

If we get the framework done today, tomorrow we can get into the substantive arguments that are there. I take it then there is not anything that anyone can think of right now that you want to insert into the chronology of events.

Ms. Fish: We will have a chance to review--

Mr. Chairman: Yes.

Mr. Turner: The important point is to emphasize that we are dealing with a matter of privilege. That is the central issue. I just hope that all members can confine their comments to that.

Mr. Mancini: I think you are lecturing us.

Mr. Turner: I am not lecturing. You accused me of that before, with great respect. I am--

Mr. Bossy: He is making a statement.

Mr. Mancini: Can you expand upon that?

Mr. Turner: Just a minute until I turn my collar up. No, with great respect, I just hope it does not deteriorate into whatever.

Mr. Chairman: Not with this group.

Mr. Turner: All right. Thank you. I was not sure.

Mr. Chairman: Let us then move to the next question which you have to consider, and I guess we might just as well get at it. The basic question that is referred here is the matter of serving of documents and I suppose, in a broader sense, the matter of privilege. That is what you are going to have to argue out.

Now you have a reasonable attempt to put together the evidence as it was heard by the committee. There is a lot of presentation, a lot of thoughtful stuff, that has been put together on both sides of the argument. Mr. Forsyth has put together for your consideration a small package of things that we as a committee have said before. To put it a little baldly, this committee has held, by and large, that you cannot serve members with documents anywhere on the premises.

We have been reasonably consistent in that in our reports on the assembly itself, on the jurisdiction of the Speaker and on matters of privilege, we have generally held that the serving of such documents within the premises, whether or not it is officially part of the Speaker's jurisdiction, constitutes a breach of privilege.

I may be oversimplifying just a bit, but I suggest to you that most of the references you could find would indicate that the serving of documents on a member, when the House is in session and with whatever caveat you would care to put on it, in general is a no-no; it is a breach of privilege. That is one of the prime matters that is before the committee.

In this instance, I do not want to paraphrase the arguments on both sides of the issue, but it is compromised somewhat in the sense that there appears to have been some communication between a staff person and the people who were serving the documents, and you will have to make the judgement call as to whether that is even relevant in the matter.

Frankly, it does seem to me that, if there is something called privilege that applies, no member of the assembly can say, "I am going to set aside those privileges," in whatever way. No staff person could intervene in that either, because the privilege is not the privilege of one member. It is the privilege of all the members. You cannot really say: "I waive my privileges as a member. You can serve me with a lawsuit." That is not what it is all about. It is about the concept that people are free to come here and to speak freely, without the inhibitions of lawsuits or, in the old days, people bopping them on the head or anything like that. That is essentially the argument.

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Is there a breach of privilege here? Has the fact that the documents were served on the premises and interrupted committee proceedings in any way infringed on the privileges of the assembly itself? You can take a rather narrow interpretation--and I suggest to you it might be of some benefit to think in these terms--of the motion that put this matter before the committee.

As you may recall, when the Speaker appeared, he himself said he

believed that the question of privilege was resolved by virtue of a motion of the assembly, so in that sense, it has been dealt with. You may want to deal with that in your report as well. You will move on into the other motion, which placed it before the committee.

What might be useful is to have an attempt or two today to address this in general terms and to set aside until tomorrow any consideration of motions or things of that nature. We can go around the table and get some general discussion started today. If you have motions that you want to present to the committee, I will ask that you give them to us as soon as you can, but at least by tomorrow.

Mr. Warner: If we continue to believe that it is a contempt of the House to serve or attempt to serve civil or criminal process within the precincts of the House, why would we consider amending the Legislative Assembly Act, as put before us this morning? If we believe it is not proper to serve, then by suggesting a change to the Legislative Assembly Act, we may be suggesting that we are not clear, that we have some doubt in our mind as to whether those privileges are held by the assembly.

Mr. Chairman: It is not quite written this way in the act. That is why there might be some sense in making a recommendation of this kind. It is not spelled out in this way.

Mr. Warner: Okay. It just strikes me as being an admission that we are not sure or that we have some doubts in our minds.

Mr. Chairman: To interrupt for a second, if there is a rationale for it, it is simply that the Legislative Assembly Act does not really spell it out in quite these specific terms, and perhaps it should. That is all.

Mr. Turner: It is based on precedent.

Mr. Warner: I think it is quite clear from the events which took place and the--

Mr. Sterling: With regard to the act, I just wondered whether the drafting of the amendments or the proposed amendments also considered the other parts of the act, in which I think there is some confusion about what is civil liability, what is not and that kind of thing. For instance, this does not take out of the act that part where it appears you cannot be sued civilly or whatever. This does not change that at all.

Mr. Mancini: Is this a legal opinion or what?

Mr. Sterling: I am just trying to deal with the amendments that are proposed to the act.

Mr. Chairman: You may want to take it back one step further.

Mr. Sterling: Yes. If we are going to clean up the act to reflect to the public when it reads the act what the rule is, then we should deal with those sections that also talk about civil liability that date back aeons of years. We are really talking about punishment for civil wrongs. I think it has always been the position of the New Democratic Party caucus, for instance, that there is no immunity from civil suit.

That is correct, and I think that should be addressed at the same time,

so that when people pick up the Legislative Assembly Act, they do not get the impression that you cannot sue somebody who is a member of the Legislature. I think that is what it appears to say.

Mr. Chairman: If I may, the rather funny notion of molestation has to be addressed. For example, when you read Erskine May, it becomes very clear that a long time ago, when they actually hit people over the head and dragged them off to the tower, there was not much question they were molesting the members. Whether serving a piece of paper constitutes molestation in the same sense may be open to your interpretation, and you may choose to do that.

Mr. Turner: Keeping in mind that the usage of English language has changed enormously over the centuries too.

Mr. Warner: Mr. Sterling's point is well taken. Whatever we end up doing in terms of amending the Legislative Assembly Act, as pointed out somewhere in here, it is the intention to contact the Law Society of Upper Canada and make sure everybody around the province understands what the rules are and why they are and what the purpose is, so that there is no further misunderstanding. We should not mislead the public into thinking that, because you are elected to the assembly, you are immune from prosecution, which, of course, you are not.

There are good and valid reasons for having the rules we have about not being served when the House is sitting so as to prevent members from being, or the possibility of their being, intimidated in trying to carry out their functions as members. What we might do, if it is agreeable with you, Mr. Chairman, is at some point deal separately with this proposed amendment to the act and anything else we might want to do by way of instruction that is going out to the law society. We have put together a little package. Maybe we could deal with that separately.

In the bigger question you raised about the specific instance, it is pretty clear to me that privileges were breached. Service took place in a room during a committee meeting. That is not appropriate; it should not have happened; that is not the way to conduct business. It is quite clear that on the narrow aspect of what was sent to this committee, Mr. Gillies was not served properly. That has to be pretty clear to the committee and that should be an easy one to put into our report.

The problem, going beyond that, is we rehashed that before and that is why we decided to terminate things. We are not going to unravel this one any more than what we have already done. You are into a morass. If you think you are going to get to the bottom of either side of this one, you are dreaming.

Mr. Martel: With Pentothal we might.

Mr. Warner: Everybody has his or her own story and motivations and so on. To tell you the truth, I think we may do ourselves a disservice in the long run if we attempt to unravel it by way of getting at everyone's motivations and trying to prove who did what and why. I think we are better off in the long run, in terms of our committee and of the assembly, to stick to the more narrow interpretation of what the House sent to us and to find, in fact, there was a breach of privilege, which is quite obvious.

The committee may wish to deal with a follow-up in terms of penalty. We do have that ability to apply penalties, and that is a separate question. The other follow-up is the notification through the law society as to what the

rules are and why and, if it is deemed necessary, to clarify the Legislative Assembly Act. That is fine by me. To me, that seems to be the appropriate course of action to follow.

Mr. Mancini: I am somewhat confused here, Mr. Chairman. Are you setting aside time right now to deal with the amendments and package from Mr. Forsyth? Are we dealing with this and also a debate concerning whether we are going to have more discussion on Mr. Gillies? I want to know, because I want to deal directly with what the chairman wants the committee to deal with in some kind of order.

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Mr. Chairman: You have two drafts in front of you, so I would say that is open for argument. I would also encourage you to get into the larger argument. I think it is time to get at that.

Mr. Mancini: You want me to get into the larger argument. Okay, that is fine. First, let me comment on the proposed changes to the Legislative Assembly Act. With great care, I have to agree with my colleague Mr. Warner. Frankly, I see nothing wrong with the way the Legislative Assembly Act is written at present. I think it is very clear to anyone who wishes to read the sections that deal with serving a member. Using historical standards and precedents and some common sense, the sections are very clear that members cannot be served 20 days after the end of a session and up to 20 days prior to the commencement of a session of the Legislative Assembly.

If we want to make the act somewhat clearer, I am not in favour of diluting what is there to protect members from harassment and I consider molestation, almost any form of harassment that would interfere with a member doing his job--if we want to bring this legislation up to reality, let us not do it by watering it down; let us do it by seeing how the Legislature has changed. For example, my colleague Mr. Bossy, who is a member of the Legislature along with the rest of us, has an office now in one of the ministries. I consider that his privileges and the minister's privileges and the ministerial offices should also be protected.

We all have constituency offices where we wish to conduct the day-to-day business of the constituency. I consider that to be a place where members should be free from harassment. Every member has an address, some type of residence, and it is not difficult to call a member's office and find out where the residence is or find out how to meet the member or get the member's okay to meet somewhere outside this building. I agree with Mr. Warner that this legislation is not to protect us from being served for some type of civil disobedience, a civil or criminal act, but it is here to protect us while we are working.

I am sure that almost all of us in this room have either been served with lawsuits because of our actions within the Legislature or we have been threatened with lawsuits. I have been threatened on a number of occasions, regularly, from one group or another that feels its position, or what have you, has been distorted, and that is fine. But I do not want these people prancing into the Legislative Assembly, into any committee, into my constituency office or into any ministerial office. If we are going to improve the legislation and bring it up to the modern day, I reject the way it has been put forward, which in my view, dilutes it.

I agree entirely, and I do this with great care, with Mr. Warner who

feels that by doing this we are almost admitting that we really do not know what the legislation says in itself. Frankly, I do not admit that at all because I feel I have a very clear understanding of what the legislation says.

Mr. Warner brought up the point. He stated very clearly that as far as he was concerned, the serving of Mr. Gillies in the standing committee on public accounts was a breach of the member's privileges. If we look at it from that very narrow point of view, I concur with Mr. Warner; it was a breach. However, I want to ask Mr. Warner and all members of the committee, was it a breach of our privileges if these people were--I want to use proper language. Is it a breach of the public accounts committee, of us as members of the Legislative Assembly, is it a breach of our privileges if these people were led into the committee?

Is it a breach of our privileges if Mr. Gillies chose to take up an hour or more of the public accounts committee's time, possibly after these people were led into this committee to cause the disruption? Is it a breach of our privileges when he stood up in the assembly and disrupted the regular business of the House with his point of privilege that particular afternoon and forced the regular business of the House to be delayed? Is it a breach of our privileges when we had to have a full emergency debate and the important business of the public was postponed for a day and the business we wanted to attend to was postponed for a day? Is that a breach of our privileges?

If we conclude that these people, for one reason or another, were actually led into the public accounts committee, and then the circumstances unfolded and in fact Mr. Gillies was served, as we all know, if we conclude that these people were led into that trap, then I say our privileges were abused. No member of the Legislature should be allowed to disrupt committee hearings, to disrupt the Legislative Assembly on two separate occasions and postpone the business of the public. I think that is the question we have to get at.

I agree with you when you ask how we are going to get everybody to tell us the truth. We are in this large morass. With great respect, we do that every day. Every time a committee of the Legislative Assembly meets and hears witnesses on any subject, we have different views and different positions and different opinions. Every day as we work, people before us put that type of proposition to us, completely different and separate from the person before them, if they have a different view. Then it is our job to decide who we give way too, who has more credibility, by reviewing the circumstances.

Mr. Martel says, and has said a number of times, "I'm from Missouri." I have to tell Mr. Martel that I am from Amherstburg and the standards in Amherstburg are as high as the standards in Missouri. I am sure the standards in Sudbury are just as high as the standards in Missouri. When Mr. Martel says to the committee that he is from Missouri, I do not want to put words in his mouth but he does not really believe what he--

Mr. Martel: It is called "smell a rat."

Mr. Mancini: He said he smelled a rat at the time. Well, that speaks for itself.

My colleague the former Speaker of the House, for whom I have great respect and for whom I have always had great respect, even though he abused me on occasion when he was Speaker, says that we have to keep this narrowly focused and decide whether some privileges were abused. He hopes that we do

not go off on all kinds of tangents for one reason or another and I agree with him entirely.

We have to find out if privileges were abused. Our contention is that if the majority of this committee believes the process servers were led into the public accounts committee on that day, plain and simple, then the privileges of every single member of the House were abused because of the events that unfolded after that.

Ms. Fish: I agree with a couple of things that have been said here in a general way. I think there is a prima facie case of privileges being abused by virtue of the service. I think Mr. Warner is quite correct when he phrases it that way.

However, like Mr. Mancini, I am very troubled by the thought that there would be a narrow focus in this matter that would fail to address what, in my view, is the far more serious breach; that is, the question of possibly deliberate intimidation and harassment to prevent a member of this Legislature from raising questions and comments appropriate to his responsibilities on the public accounts committee and in discharging his proper responsibility as a member of this Legislature in his position as the lead questioner and critic of an area of public expenditure and decision-making by interrupting the specific proceedings and thereby abridging the privileges of all the members of the committee in undertaking that investigation; indeed, all the members of the House.

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My real concern is the pattern of behaviour and direction displayed by the law firm of Stikeman, Elliott in its direction to the process servers and the action of the process servers apparently pursuing attempts to prevent a member of this assembly from clearly exploring questions of expenditure of public money and approvals for same.

That, I think, is the nub of the issue. We had the representative from Stikeman, Elliott before this committee, who engaged in the bizarre suggestion that on the one hand this firm of such enormous prestige within this country would never undertake any matter lightly, and made the suggestion under questioning that the suit and the amounts sought in the initial suit with the notice of libel, letter of intent and so forth, were quite appropriate and reasonable. I am obviously not quoting. I will find the quotes if that is of interest as we engage in debate later.

At the same time, that same representative up in the forefront of this fine, responsible, extraordinary firm, of this country and of this province, suggested that neither he nor anyone else in his fine, responsible, careful firm, which would not undertake anything except in a very serious way, had no idea whatsoever what was under discussion at the public accounts committee that morning. Everyone else seemed to know precisely what was under discussion. What was called for that day was a further inquiry and investigation on the very subject that firm, acting on behalf of Ivan Fleischmann, clearly wished to stop.

I suggest to you that the pattern of timing on the initial letter of intent that was sent, followed up by the incredible pattern of timing on service, made that very clear. There was a wish to prevent a leading member of

this Legislature, of the committee, from properly inquiring into matters of possible abuse in expenditure of public money.

I think the possible issue of intimidation and harassment, of the potential for deliberate interruption of proper investigation and discharge of responsibility by members and by committees of this Legislature, is the most serious aspect of this entire matter.

On the question of being led to committee, we have Mr. Clamp, who amended his affidavit in testimony, who changed the words that he used several times in his possible description of the telephone call with Ms. Artmont, who suggested that perhaps the dates were wrong and who finally said that he filed his affidavit on what occurred at committee when he was not there and did so late on the date that it occurred, presumably under extensive discussion with an employee of his own.

I think Mr. Mancini is quite correct when he said the issue goes to credibility; I think it does. I think the incredible testimony is the testimony offered by Mr. Clamp. He clearly changed his description on several occasions as to when he spoke with Ms. Artmont and when he did not, what he might have said to her, how he might have described the materials and whether or not he had any understanding of appropriate service. There was the testimony of Mr. Lederman, on behalf of Stikeman, Elliott, who suggested that they would always know everything possible about a case on behalf of a client and would never undertake to do anything they did not know fully and responsibly, who at the same time and by the same token, evidently directed the process server to deliver papers at Queen's Park when the legislation makes it perfectly clear that service would be inappropriate and in the face of what everyone else clearly understood to be the agenda of the committee and the attempts of the committee and members of this Legislature to discharge their proper function and duty.

Those are the elements of incredible testimony and the issue we should be dealing with. Beyond the question of privilege being abridged is the issue of harassment and intimidation, the deliberate interruption of proper investigation and raising a question in the public domain in the public interest.

Mr. Chairman: This afternoon, in an attempt to focus the discussion a bit, I would like to go over some of the questions you have included in your original briefing material. I point out as well that some deliberation might be given to the fact that people--I am not sure how sticky we should get about this but I would at least like to broach the subject--provided testimony before a legislative committee under oath. All witnesses testified under oath, even a member.

If it is the committee's decision that you did not receive accurate information, you will have to deliberate on that matter. In other words, to be a little more blunt about it, if you think somebody lied to you, it is your job to say so and to determine what kind of punishment or sanction would be appropriate.

You may choose not to deal with that matter altogether. That is your right, but I also have to point out that is fair game. Although we do not often consider this, I suppose, we did take the time and the effort to see that people testified under oath. That is as it would be in a court of law, so if it is your determination that someone did not provide you with accurate testimony during the course of the hearings in this aspect, it is within your

jurisdiction to offer some comment on that and some sanction on that. We should be mindful of that as we go through it.

Mr. Martel: I have two points. When we talk about amending the legislation, I think there is one place we have forgotten: When committees travel, are the precincts they are in merely an extension of the Legislature? In other words, if a committee went to Oshawa for some hearings, could a member be served? If it is merely an extension of the Legislature and you have the same privileges there as you have here, that should be included. I agree with Mr. Mancini that all offices here, whether they be for cabinet ministers, parliamentary assistants and so on, should be off limits.

My friend the member for Carleton-Grenville shakes his head.

Mr. Sterling: Not a cabinet minister. You cannot protect a government cabinet minister from being served.

Mr. Martel: I am not saying protect him from being served. If the cabinet minister's office was in this building, he could not be served in this building. Because this building is not big enough to accommodate everyone, you cannot get all the ministers or parliamentary assistants in here. Why should those who are centred in this building have a privilege that does not extend to all of them? I am not talking about riding offices; I am talking about here, as an extension of their duty here. I think that should prevail simply because we do not have the space in this building.

In the House of Commons in Ottawa and the two or three buildings surrounding it, which I think house nearly all the cabinet ministers, the privilege extends there and it should be the same here. There is no difficulty, I would think, for a law firm to find out, particularly if it is spelled out in legislation as opposed to precedents. I do not think we have a book of up-to-date precedents anyway, although one was started a couple of times and there are some in. I think we should do it that way.

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The other issue, and I think the last two speakers have put the two positions forward, one side is arguing it was intimidation. It might well be, but I cannot get into the minds of the people and their motives behind it. The same would apply to political motives, whether one thought they could gain political advantage by having themselves be abused in front of a committee or in the Legislature. Again, it is motive.

I really had difficulty accepting some of the testimony, and I indicated during our last sittings that I had difficulty. As one who has been sued on two or three occasions, the last time when there was even a threat, my assistants found me in a part of the province and they spent considerable hours getting hold of me. I find it passing strange that an assistant who knows there is a lawsuit impending gets a phone call from the company and then later on says, "Well, I did not bother telling the member for three and a half days."

Again, I cannot prove the motive behind that, but I think those are the two positions that are being advanced. There might be a little truth in both, quite frankly, but unless I am prepared to submit these people to polygraphs or pentothal, I really do not know how I am going to get the answers to the questions that both sides are advancing. I just do not think that is possible.

I might have difficulty accepting that Lyn Artmont did not tell Phil about that, and if she was, I would be looking for a new assistant the next day, quite frankly, but how can I sit here and say, "Well, Phil did not know," or "Phil did know." You cannot argue either way. I have to accept Phil's word he did not know. I have some difficulty with Lyn Artmont saying she did not bother telling him. That is my difficulty. But again, I would have to prove the motive behind it. It could be that she did not think about. I find it strange she would not, but if it is motivated by political gain or advantage, you are never going to get to the bottom of getting at someone's motives and I do not think you can make accusations against another member then, if you are trying to prove his motives, unless it is in black and white somewhere, or you have wiretapped him.

As I say, the same with intimidation. I listened to the evidence. I was not pleased with a law firm of this calibre not instructing their server to make sure that they followed the procedures of this Legislature. Again, that could be accidental. I guess they serve so many in a day or a week that they might not have taken it into consideration. So unless you think you can prove motive, then you are going to have real difficulty.

That is why I am inclined to stick to the narrow of whether or not members' privileges and the privileges of this Legislature have been breached, and I think they have been.

Mr. Chairman: Before you continue, I would remind you in a gentle way that it is pretty difficult to consider that the law firm acted by accident, when the law firm, in fact, went out of its way to indicate that they had sought legal opinion, and provided to the committee a legal opinion, that the serving of the documents was acceptable. I cannot stop you from saying that they did so by accident, but I would point out to you that you have a law firm acting in this particular regard to say, first of all, that they considered the matter themselves. They researched it enough to get a legal opinion that had, in fact, been provided to this committee on a previous occasion. The committee did reject it, but they sought that out and they provided that legal opinion to the committee in writing. At least in my view, you are on kind of shaky ground if you say they accidentally served the documents. They thought about the matter. They sought a legal opinion and they provided us with that legal opinion.

To be fair, I think it is a matter of record that the law firm made a determination that the serving of the document was an acceptable procedure and that was not by accident.

Mr. Bossy: In trying to come back to what we would call the narrow part of the whole question, the question I want to come back with is, how did the statement of claim come to be served on Mr. Gillies in room 151 during the standing committee on public accounts proceedings? I think that is very important. How did it come to be served when they were sitting in this room or wherever it might have been?

First of all, as members elected to this Legislature, we generally--especially if we have had a little bit of experience here--get to know very well what our privileges are.

Another question arises here. During my short term, I have heard several people in the Legislature ask, "Would you say that outside this House?" Some people--and it happens to be Mr. Gillies--did make the statement that, "Anything I say in this House, I will say outside of this House." Based on

that, he must have been able to determine what he could and could not do or where he would carry this on.

This is a point that I feel a little bit sensitive to, that as a member, and a bright member, he would not know his privileges and where it could be said.

I want to go further, to when it took place, because that is the question. We can go back. I asked the question of Mr. Patton. We know the evidence of Ms. Artmont as to the prearrangements. We have statements here that say it was mutually agreeable to meet on this, and Ms. Artmont did not deny that. She has said she was part of that.

Then I asked Mr. Patton the question on February 19 in the morning, "Was there ever any doubt in your mind when you arrived here that there would be any other place you should go to serve except room 151?" He replied, "I was told to go to room 151. I did not know what was in the room other than it was room 151. That is where I would meet Ms. Artmont and Mr. Gillies after 10:30. It is on my worksheet." I further asked, "When you left your office, you fully understood that it was a prearranged meeting?" Mr. Patton said, "Yes."

He agreed exactly that it was a prearranged meeting, so we have to determine that the meeting that took place in the room was prearranged.

We also know that Ms. Artmont discussed this with Mr. Gillies on the morning of the public accounts meeting. That was the first real meeting. When I look at how it was served in that room, whereby Ms. Artmont was identified and then Mr. Gillies was brought by Ms. Artmont to the back of the room and served, I have to assume that at no time did the public accounts meeting that was taking place have any idea this was transpiring. Therefore, there was no disruption of the public accounts meeting itself, because of the fact that this was a different item that was being dealt with, as we many times have. We have people come in from our own office or wherever to bring us messages or whatever. It did not disrupt the meeting.

Plus, Mr. Gillies really understood that his privileges were that--and he has made the statement in the House or outside the House--at no time would he be deprived of stating anything concerning the issue that was being dealt with by public accounts. He could come here and not be interrupted. He could say what he wanted or he could carry on. It makes no difference whether he did that, and he ended up doing it back in the Legislature after the discussion took place. At no time was he interrupted in saying what he wanted, and the influence he would bring to the public accounts meeting should not have any bearing on what happened back there, because he should not have been intimidated by that, because he had the privilege. He hesitated in accepting the documents, which must have said something, that he knew something about privileges. This is the thing we come back to.

1130

The statements that were made in evidence here--you can read them, and I have read them backwards--of what has been said and what has not been said. I would have liked to have seen further evidence to clarify what we keep coming back to as--I do not like using words such as lies, but I say--untruths, we perceive there seems to be from both sides. We are trying to unravel this thing.

I say that based on the proceedings of the presentation here when that

statement of claim was presented, we must decide what led to this, without--and Mr. Martel hinted at it, Ms. Fish went beyond it, we can say, "It was done for this reason or that reason." I would not want to take part in writing a report that presumes Mr. Gillies did it for his reasons, that the servers did it or the law firm did it for other reasons to influence whatever proceedings were taking place here. I do not think we can do that in a report.

In other words, we must determine whether the disruption of the serving here--forget about where it was done, but how it came to happen. That is very important. How did it come to happen? If someone had set up a prearranged meeting and followed through exactly--and Ms. Artmont does not deny that and the other evidence does not deny it--that they agreed to meet here.

We can always say, "Did someone take advantage of a situation?" Then we have to make presumptions and we cannot go that far. To know one's privilege as a member and, like I say, I have a hard time believing that a member does not know that. The subject came up with respect to the precincts of this House and this Legislature. My office, sitting in the Maclean-Hunter building, is an extension. I was here when this happened, but now I am on Bay Street--that sounds good, that you have your office on Bay Street--but it is under the jurisdiction of the Legislature, because my expenses are being paid by the Legislature. To where do we extend the places that you may serve someone or restrict that service?

Now we can go into many things and go right back to the words that were spoken here and again come back with somebody is lying or telling an untruth.

Interjections.

Mr. Bossy: Forgive me. I have my doubts and very serious doubts.

Mr. Chairman: Let me point out that it might be worthwhile including in our assessment of the chronology of events that: (a) there was, for example, a notice that a meeting was under way. There is a notice-board outside each of our committee rooms. People walking into this room or room 151, in my mind would have some difficulty in saying, "I did not know there was a meeting under way." There is a group of people sitting at tables, there is a Hansard service being kept, so it is fairly obvious to me, just walking in the door, that there is a meeting under way and that in some way, if you are passing pieces of paper, you are interrupting that meeting. I think that is rather a given.

I would also say that during the course of the meetings this morning, and during every session of the assembly, there are interruptions. People come in. Your staff comes in and hands you notes. I dare say if somebody from any of the media says, "Would you come here for a minute?" almost every member of this committee would step outside for an interview with any newspaper, television station or radio station. You pass little notes to one another. In that sense, you interrupt the proceedings. Those are accepted facts, I would say.

What you are trying to determine is whether there was a disruption of the proceedings, whether that disruption was planned in any sense and whether that constitutes a breach of privilege. I caution you not to get too carried away with this. You would not want to throw the pages into jail every time they brought you a note from somebody, whether it was from a member of your staff, the media, a constituent or whoever.

In the same way, if some page brings me a note that says there is a group of students from E. A. Lovell Elementary School, I will tell you now that I am going to get up and leave the assembly and go out and have my picture taken with them. Whether that constitutes privilege is another matter, but it is certainly going to disrupt the proceedings a bit. The facts are rather clear in that regard. It is the determination of how serious that would be.

Mr. Sterling: I thought this committee decided when we first had the hearings, immediately after the closing of the session in February, that we had, in essence, made a decision that we were not going to determine what intention was or was not.

Basically, we said at that time, as I heard in the argument, that if we were going to go to the intention, we were going to have to call a lot more witnesses. We were going to have to call back Mr. Fleischmann and maybe Mr. Gillies and Ms. Artmont. We were going to have to cross-examine all these people. On the evidence that we had, the conclusion of the committee, as exhibited in the final vote, was that we probably would not get to the bottom of it anyway, regardless of going through and slinging mud in various different directions.

I was a member of the public accounts committee the day that event took place and, notwithstanding that Mr. Gillies alone was served, I think that, quite frankly, all the committee members' privileges were breached that day. I do not think it was unreasonable, under the circumstances, for Mr. Gillies to bring it to the attention of the committee since that very matter was being discussed that day. I defy anyone who is served with a suit that alleges to claim \$1 million or \$2.5 million not to be somewhat upset with what is going on around him.

With regard to penalty, I was not satisfied in anything that I heard that anyone did anything with regard to the intention of serving that writ in that room. I think that happened more by bad chance. I just do not think it happened in terms of either Mr. Fleischmann planning for it to occur during that specific moment in our history or Ms. Artmont inviting him in at that time to have it happen.

I am a little suspicious of Mr. Fleischmann's timing in the whole matter, regardless of whether Mr. Gillies had been served inside or outside the House and whether he had been served quite legally. I imagine that part of Mr. Fleischmann's strategy, which is entirely legal to do, would be to try to keep Mr. Gillies a little quieter on the issue and have less press concerning him at that time.

There is no doubt in my mind that Mr. Fleischmann knew what was going on around here. I just find the timing a little bit hard to take, when the writ could have been served up to six months later. But that is within our legal framework. He could have served Mr. Gillies outside. I guess that kind of intimidation, if you want to call it that, is permitted within the rules of our legislation.

I think the clarity of the act is important. Maybe Mr. Mancini and other members of this committee fully understand the extent and scope of the sanction against service of what civil or criminal liability which members might be open to. I only say that in the 10 years when this committee on other occasions has been dealing with this question, there always do seem to be questions about the existing legislation.

Even if we all understand it or we all think we understand it, surely there is a duty upon us to inform the public at large in clearer English language than is presently contained in that act how far this privilege does go, and by regulation, I guess, as suggested in the amendment, clearly define the areas of jurisdiction that are out of bounds in terms of service.

1140

With regard to contempt or noncontempt of this Legislature by a witness, I only say to the chairman that every day in court the judges hear conflicting evidence between two witnesses in civil and criminal trials. Probably in most instances, there are more blatant opposing views as to the facts in a particular circumstance. It is a very rare occasion when the court exercises its right to call a witness in contempt of that court. It is only in the case where there is absolute, 100 per cent proof, very strong evidence, that there was an intention to mislead the court and that there is some irrefutable evidence on the other side of it. I do not know whether any of the statements on either side could be proved within that category.

In the final analysis, we must remember whose responsibility it was to serve this writ correctly and, in my view, that responsibility landed on the shoulders of Stikeman, Elliott through their client, Mr. Fleischmann. When you are a defendant in a lawsuit, you have no responsibility to make certain the papers are served on you correctly. That is the responsibility of the plaintiff in the suit. He must take the proper steps to have you drawn into that particular civil litigation.

The only thing I find from the evidence hard to understand--the action, after studying the matter, by Stikeman, Elliott--was the fact that the firm did not send one of its own solicitors or articling students to come and serve it directly to be certain that someone who knew a little bit about the history or the law in relation to serving members in the Legislature, was carrying out the physical act of service.

I do not know whether you would call it sloppiness on their part or what, but it is hard for me to accept that you can hand off to an agent, like a process server, in a situation like this, where there is a reasonable expectation of a foul-up, when you send somebody to the Legislature, over whether he is within the precincts. I think that decision to send a process server rather than to send one of their own people was probably a lack of judgement on their part in this whole thing.

I do not know how we are ever going to get to intent. I thought we had decided against that. Therefore, I would support writing a report which recognized breach of privilege, that really could draw attention to the fact that the rules are unclear. There needs to be a clarity of the act, and I think we will have difficulty in trying to draw conclusions with regard to the conflicting testimony.

Mr. Warner: I was going to suggest that a way to proceed from here might be to start with what appears to be a consensus, that there was a breach of privilege. If you look at what was given to us, the instruction was that the matter was referred, so we have to report back. The one thing upon which we all agree, it appears, is that there was, in fact, a breach of privilege. If we start from that premise, no doubt it was a breach of privilege and was very obvious.

Mr. Bossy, you cannot deny that a person came into the committee room

and served papers. I was not here, but I understand that. That happened. You cannot say now that it did not happen. It happened. All right. That is a starting point. If anybody wishes to add to that, to prove the claim either that someone was intimidated or that someone orchestrated the whole thing, then let him move such a motion and attempt to prove his point and win votes.

Why do we not start with the one thing upon which there is common agreement, that it was a breach of privilege, and use that as a starting point? If we do that, maybe we can wrap this thing up this afternoon. It is kind of silly just to drag it on when I think everybody knows, regardless of what you want to prove, what you have to go on are two things: the sworn testimony we took and the fact that the people who gave their testimony did so under oath.

This is not a courtroom where we go through the cross-examination using lawyers to try to unravel people's stories. What we have to go on is the testimony, and we have finished hearing the testimony. Everybody will interpret testimony differently. That is just human nature. Why do we not take the one common thing we have and then let people put motions if they want to add to that or alter it in some way?

Mr. Chairman: Okay, we have had a general discussion this morning, which is always useful. What am I going to propose to you is I have heard a couple of people say they would like a little chance to go over the chronology and the brief report that Mr. Forsyth has put together on the act itself. I suggest it might make some sense to adjourn now--it is near 12--to give you a chance to go through those two documents.

When we come back this afternoon, I would like to be a little more specific and I would like, if it is agreeable, to proceed by means of discussing the motion that is before the committee. There is also a list of questions in your briefing documents. I think that if we can touch base on those, we will have covered all the aspects of it that need to be covered.

After that, if there is a desire on the part of anyone to put forward a motion, we will debate that. If you want the staff to assist you, it might be better in this instance to get hold of Mr. Eichmanis or Mr. Forsyth or anybody else you want to assist you in drafting the motion. I am anticipating that the report on this matter will be somewhat succinct; it will not be a lengthy one, although we do have a great deal of documentation. If it is agreeable, that is the way we will proceed.

We will adjourn now. You will have a chance to go over the documents you have in your possession now. When we return this afternoon, we will debate the motion that the House has put before the committee. We will then move to the list of questions which cover all the aspects of that and then we will entertain any motions that anyone else has. It will be a help, if you have a motion that you want the committee to debate, to give us as much notice of that as you can.

In other words, I am telling you if you want to put a motion in front of the committee this afternoon, draft it over the noon hour and table it when you come back at two o'clock, and that will give people a chance at least to look at it during the course of the afternoon. I do not know whether we can conclude this matter this afternoon. It might be advisable to come back tomorrow and go at it. I am a little concerned that somebody can put a motion on the table this afternoon and we might be able to conclude the debate on it; it might be one of those occasions when you would like to think on it overnight.

If that is an agreeable way to proceed, we will adjourn now, come back at two and do the motion. Then we will do the questions that are in your briefing book and entertain any other motions members might have. Any further business? We are adjourned until two.

The committee recessed at 11:50 a.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

TUESDAY, APRIL 7, 1987

Afternoon Sitting

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Treleaven

Poirier, J. (Prescott-Russell L) for Mr. Morin

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, April 7, 1987

The committee resumed at 2:15 p.m. in room 228.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: I have one motion proposed by Mr. Sterling. I assume you have copies of it. Are there any other motions I am going to have to deal with? Mr. Warner?

Mr. Warner: I am slightly confused about what precisely was placed before this committee, because when I reread the material, the wording is that the matter is referred to the committee. I do not recall that there is a specific motion that cites loss of privilege but rather the whole area of the matters raised by Mr. Gillies. I think what the committee needs to do is to draft a particular motion with respect to the privileges of the House. I seek your direction on this one.

Mr. Chairman: If we can start with the motion, which is exhibit 3 in your binder, if you have your binder with you, the motion itself refers the incident to the committee and goes on to call for an investigation and a report. It is in one sense rather broad. The Speaker, in testimony before the committee, said--and I will paraphrase him--that by virtue of this motion having passed, the House has said there was a breach of privilege. So you have that matter to consider.

In the course of the investigation or the hearings, a number of other matters were brought to the committee's attention. It is your job to pick and choose whether to do anything about any of that testimony or to ignore it. You are quite free to do that. As I read the motion from the House, you really have no confining restraints of any kind on you. The incident was referred to the committee. I think you will logically have to deal with the matter of privilege, even if it is only to reiterate what the Speaker said when he was here. I would deal with it in that way.

I may be wrong on this, but not having seen any further motions from anybody, I am not anticipating that the report will be a lengthy one. It would essentially consist of the chronology of events you saw this morning perhaps expanded or altered in some way. You would speak to the matter of privilege.

We can go through the questions that were placed in front of the committee for its consideration and see whether members would like to talk to any of those matters, but it seems to me reasonably straightforward that the staff could draft a response in relatively short order. In my view, there is not a big rush on this. If you give the staff direction on what you want and it is a very succinct piece of business, we could deal with that. We have two more sitting days this week, but it would not seem to me to be a major problem if it were held over until the assembly reconvened to confirm it.

Are there any other comments on the motion that was placed before the House and its ramifications?

Mr. Warner: I was right. It is kind of an interesting procedure that the Speaker has used here. He has taken the report from the standing committee

on public accounts, which is written in a language that recommends a referral for investigation and that somebody engage legal counsel to assist Mr. Gillies. That went into the House, and then the Speaker said that because the member spoke on this in the House, he took it as a request of the member and forwarded it to our committee.

What is missing is a clear statement that a member's privileges were abused. That is what I think has to be in the report: just a very simple, clear statement that privileges were abused, or whatever the proper terminology is.

1420

The only other thing I would like to see with that is what was mentioned to us by the Clerk of the House, and maybe by the Speaker as well, that the privileges which I enjoy as a member are not really my privileges; they are the privileges of the House. I do not have the right to give them away, nor do I have the right to abuse them. They are privileges which I enjoy because they are enjoyed collectively by the House. Again, I would like that in very succinct, clear, simple, precise language.

I would like to see those two points put in there, because actually it is not very clear. It is not straightforward in what was adopted by the House on January 22.

Mr. Chairman: Any further comment on that motion? If not, perhaps it would help us a little bit in going through this this afternoon if we made reference to what was contained in a previous memo that Smirle gave to the committee. It kind of runs down some questions, which you may at least want to think about. Some of the answers are fairly apparent.

First, was a service or process attempted or effected on Mr. Gillies and Ms. Artmont on Thursday, January 22, 1987? I think it is apparent that there was such a service. That is not in dispute.

The second one is about instructions given to Mr. Lederman by his clients, Fleischmann and Canadian Intercorp. I am not sure how valid that consideration is, but you did have some testimony in that regard. You can draw your own conclusions on whether that is relevant to the debate, or how, except that as it ties in with some other questions here, I think you do have to consider those.

The next one is perhaps a little more to the point: Was the counsel to Ivan Fleischmann and Canadian Intercorp instructed to serve the statement of claim on Mr. Gillies and Ms. Artmont at the Legislative Building? There, it is pretty difficult to escape that by means of providing us with legal opinions both in testimony and in writing afterwards, the law firm felt it was properly serving the documents in the building. You may want to comment on that.

I am not sure about instructions to Metro Process Servers. It seems to me you could make an argument that the process servers were the people who were guilty of violating somebody's privileges. In the end, I think you would have to reflect on that and think these people were acting as agents for a law firm and that in essence it would be the law firm that would be primarily responsible for the actions of anybody. You could criticize them for not going into the matter of privilege, what it was, jurisdiction or all that. I leave that up to you.

On the next one, some members may want to consider the matter of whether the serving of those documents was done with a consideration to having an impact on a particular government program or on a committee's work. That again goes back to the motion which the standing committee on public accounts presented.

Would you be interested in considering whether Fleischmann, Patton, Lederman or anybody else could be found in contempt? Do you want to carry it that far, which would be your option? Were any of those people aware of the sections of the act? I think their written opinions are evidence that they were. They have a different interpretation of those sections.

You may want to consider whether Lynn Artmont arranged for service of documents in the Legislative Building or the committee room. Again, there is conflicting testimony as to how aware she was of the nature of this. You have to draw your own conclusions there.

Was Mr. Gillies aware of that? I would caution you that when you enter into that field, you do have to take a member at his word. Unless you have substantive grounds for thinking or saying otherwise, and I do mean substantive, you are pretty shaky when you are challenging that. If you are contemplating motions of contempt against a member, you have to have evidence--fairly strong evidence, I would say--before you put such charges in the form of a motion and put them in front of a committee.

I am not terribly concerned about whether room 151 is in the precincts of the House. I think, for our purposes, it is. I think it even falls within the little map that says it is.

We do have to deal, perhaps in this report or subsequently, with the matter of serving documents in a civil proceeding. I have not heard very many people argue that you cannot be served such documents; the argument is where and when.

At the federal House, they have actually worked out an arrangement so that if you are to be served certain documents, the line on the street where the jurisdiction of the House ends is clear and known. They have a little arrangement that if you are going to be served with some kind of document in a civil proceeding, the process servers will serve you outside the jurisdiction of Parliament, so the argument has been advanced to that state. You may want to do that.

It is apparent that the Speaker did not give his approval in any way, shape or form. You can get into intentions in the next two considerations, if you want. I would caution you, before you get too far down that road, that is a very difficult road to travel. You are going to have a hard time documenting what anybody's intentions were. You can take a shot at it if you want, but it is going to be very tough to prove.

You may want to do what I think Mr. Sterling's motion attempts to do; that is, address yourselves to things such as contained in the 15th question here about where you can serve documents, what constitutes that, who can do it and how can it happen. I agree with Mr. Warner that in some manner you have to address yourself to the privilege question in a little more direct way than the motion from the House did.

I think the answer to 17 is yes. I guess 18 is answered in the sense that if you have decided there was a breach of privilege, you have some grounds on which you would say that--

Mr. Sterling: Sorry; before you go by 17, you said the answer to that is yes. I think there was evidence that the answer was the other. Is that not what Stikeman, Elliott argued? It is the time period they are referring to there.

Mr. Chairman: My definition of the Legislative Assembly Act says that if you serve under those conditions, if you serve a document within the precincts of the House while the House is in session or 20 days before or after, yes, that is a breach.

Mr. Sterling: Section 38 does not refer to the precincts as such; it just refers to the time period.

Mr. Chairman: Yes.

The last one, I guess, is a little more difficult. One could say that again the member was inhibited in some way from proceeding with his duties. One could go back to the original motion when everyone was very upset that the proceedings of a committee kind of came to a halt, but one would also have to observe that it did not come to a complete halt and that at such time as the committee felt it had dealt with something, it promptly went into the House with a motion. So it proceeded to do business, as did the House.

What is perhaps a little more relevant is that the House set aside an entire afternoon of business to deal with the matter, and that certainly threw a little cog in the wheel. You have to assess how far you want to get carried on that particular road.

Those are the parameters of the discussion. We had a little general discussion this morning. I have one motion that has been placed before me, we have a draft of the time frame or the events as they happened and we have another draft of some wordings that might go into a recommendation about changing the Legislative Assembly Act. That is what is on your plate. Give me some direction as to how you want to proceed from here.

1430

Mr. Warner: I want to make two comments. One is that I think we are also obligated to answer a question that has been put before us from the standing committee on public accounts.

Mr. Chairman: What question is that?

Mr. Warner: It says, "Your committee recommends strongly to the committee to which the matter is referred that it consider the engagement of legal counsel to assist Mr. Gillies in defending himself against legal action arising from this matter."

Mr. Chairman: I think that has been disregarded, at least by the chair, in part because Mr. Gillies said he did not want any.

Mr. Warner: That is fine. Because it is a question that was raised by another committee of the House, I think we have an obligation to answer the question.

Mr. Chairman: You would like to see something in the report.

Mr. Warner: Something in the report that answers the question so the committee does not think we ignored it.

Interjection.

Mr. Warner: Yes, that is fine. Just put it in print, that is all.

My inclination would be simply to say in the report that your committee finds that the privileges which are enjoyed by the House were breached in the incident which involved the serving of papers on Mr. Gillies.

We will discuss penalties at some point, because there was a breach that occurred and you discuss penalties. My inclination is that the law firm that was responsible for the serving of the paper--although it did not itself serve it, it used a process server--I gather a very prestigious law firm in Metropolitan Toronto, had an opinion which said it was right in doing what it was doing. We have challenged that opinion. We have said our interpretation of the act is different from theirs. My inclination is not to attach a penalty to that law firm. I am not sure that serves any useful purpose, to tell the truth.

Like other members or anybody else coming before us, you have to accept in good faith the information which is put in front of you, because it is put under oath. The law firm, in good faith, said, "We were given an opinion that it was quite all right to serve papers and that is what we did." They have done their little research and they gave us papers that said their research said they were not doing anything wrong. If they were operating in good faith that this was okay to do, then I am not inclined to turn around and try to slap some sort of penalty on them.

Mr. Sterling: I do not want to penalize them either. I think their legal opinion probably--I would have to go over it again, and maybe I should before I talk, but I understood the opinion said there was nothing prohibiting you from serving papers of a civil suit nature, in spite of section 38, and you could serve them in some parts of this building. I do not think their opinion indicated that you could walk into the legislative chamber, for instance, and serve the paper.

Mr. Warner: Right, but they thought they could serve it in a member's office, for example, to which I take exception.

Mr. Chairman: I think I should try to straighten this out. The opinion that is being talked about here was an opinion ventured by a gentleman who was hired at one time by the standing committee on procedural affairs on the Riddell matter. His name is Burton Kellock. This Stikeman, Elliott firm did not get this opinion in the sense that it went out and sought a legal opinion on the matter. They were obviously aware that this opinion had been done for the committee.

I should also point out that the committee at that time rejected this lawyer's opinion and said, "It does not matter what you think. We do not agree with you," and we did not use it.

To be clear, obviously someone in the law firm had done some research on the matter and had come across a legal opinion that had once been submitted to the procedural affairs committee, but the committee rejected it at the time and, as a matter of fact, went in the other direction entirely. It cost us only \$15,000, but it is not an opinion that was sought out by this law firm, and I would not like you to get the impression that someone went away and thought about this for six years and came up with this opinion. This is an opinion that is a matter of record because it was filed with the committee, but we did not agree with it at the time and I take it most of you still do

not. I think you are just tending to give it a little more status than perhaps it might deserve.

Mr. Warner: Fair enough. I am still not inclined to attach a penalty.

Mr. Chairman: Any other comments?

I am getting the feeling that you are looking for a succinct report which deals with the matter of privilege, which has a recommendation having to do with clarifying the Legislative Assembly Act, and the chronology and not much more. Is there more that anybody wants added to it?

Mr. Mancini: There is a lot more we would like added to it, but I do not think our motions will carry. So I believe what we are going to do during the course of the writing of the report is make our case known and then go from there. I do not believe we will even bother to put forward motions because I do not believe they will carry, for one reason or another, so you may end up with a very short report. I do not believe we can support Mr. Sterling's changes to section 34 and section 45. I believe he is diminishing the protection that we now have.

When we talked this morning about offices and where members do their work, I think it was made pretty clear that if you are an ordinary member there is space in the Legislative Building for you. If you become a minister or parliamentary assistant, because of the size of the government and for no other reason, you are moved to a ministry outside of the building. I thought that was made very clear this morning. Mr. Sterling has not taken that into consideration. As we have done in the past, I do not believe we have made changes to the Legislative Assembly Act unless we had some kind of unanimity. We do not have any here.

Mr. Chairman: Let me try it on for size, then. Is there general agreement on the chronology of events? That should be included in the report. All right?

Mr. Turner: I think so.

Mr. Warner: Yes.

Mr. Chairman: What about the draft, put forward by Mr. Forsyth this morning, on recommendations to change that and perhaps adding to that some draft that would cover ministers and people in other buildings? Is there some agreement on that?

Mr. Mancini: I am sorry. Say that again.

Mr. Chairman: The draft that was put forward this morning by Mr. Forsyth on changes to the Legislative Assembly Act. I am hearing that you would like to include in that ministers and parliamentary assistants who might be located in another building.

Mr. Turner: I think it should include the offices themselves, because that really is not very clear.

Mr. Chairman: Some attempt is made to cover that. We could draft that.

Mr. Mancini: With all due respect--

Mr. Chairman: You are saying no?

Mr. Mancini: I think I would like to take some of these proposed changes back to the Liberal caucus for some discussion.

Mr. Chairman: What I am proposing, if we have your concurrence, is to proceed with drafting a second version of Mr. Forsyth's recommendations of this morning. We would proceed to do that.

Mr. Mancini: This package here?

Mr. Chairman: Yes. We will proceed to amend that and redraft that for your consideration.

Mr. Mancini: If he wants to prepare something more refined than what we have now, or make some changes, I have no objection to that. I am not so sure we can include it in any kind of report.

Mr. Chairman: I am not asking for your concurrence to include it or not, but just give me some indication of drafting.

Mr. Martel: Make sure that includes committees that are travelling, because if, when we travel, there is an extension of the Legislature and all of the immunity or whatever that all entails, it should be the same as here. Whether we are out in Oshawa or Ottawa, people should not be able to walk in and try to deliver a summons on someone or something like that.

Mr. Chairman: I think we have agreement that we will draft something like that for your consideration.

Mr. Sterling: I think the amendment I put forward is basically the same amendment Mr. Forsyth put forward, except that I wanted to take section 38 out of the act because I find it misleading. It does not say anything. All it does is mislead people as to what are the protections we really have. If you read it as a layman, that section says you cannot sue somebody civilly. That is not right. I think it is misleading and anybody who reads section 38 of the Legislative Assembly Act gets the wrong impression. I do not think that should be left in law, and that is why it was taken out. The other subsection adds to it.

1440

Interjection.

Mr. Sterling: I took section 38 out as it stood and dealt with it in terms of service of documents.

Mr. Warner: Smirle has something.

Mr. Sterling: Smirle added to it. I think leaving in the other part of it does a disservice to the members of the public who might read the legislation.

The other thing is, in terms of casting the net as to how far the service of documents goes, first of all, for simplicity's sake, we should include the Legislative Building, regardless of who may or may not be occupying it, so that it is clear in language where you cannot go to serve papers. That takes care of the problems of members' offices, whether this is in or out, whether you are in the hall, whatever.

Mr. Turner: What you are suggesting is removing the words "under the jurisdiction of the Speaker."

Mr. Sterling: Yes. For instance, the Office of the Premier would not be under the jurisdiction of the Speaker.

Mr. Turner: No, it is not.

Mr. Sterling: There has to be a practical effect on how you do this so that there is a general rule as to what happens so that we do not have the same kind of thing that arose here, where some lawyer gave a writ to a process server and he walked up to Queen's Park. He could have served it to Mr. Gillies out in the hall--about 15 feet from where he served him--and, presumably, there would not have been any problem. I think the rules have to be fairly simple.

The other thing is that Mr. Martel says that should be verboten in any meeting of the Legislature or a legislative committee. I would give the regulatory part of the section as well. If you want to extend that to members' offices in the Whitney Block, the Hepburn Block or wherever, that can be done, but that will change from time to time. I am not sure you can really mark that down.

The trouble I find in protecting the minister is that he can be sued in two different ways. He can be sued for his individual actions in going out and slandering somebody or he can be sued as the Minister of Health, for instance. How do you serve the Minister of Health in this government if you cannot go to his office, where he normally resides?

Mr. Martel: That is no mystery. The only place that is excluded is his office. The rest of the world is available to them.

Mr. Sterling: That is where you would normally find him.

Mr. Turner: Not necessarily. He is all over the place.

Mr. Warner: You could simply make an arrangement. That is what is done in Ottawa.

Mr. Sterling: I guess that would be the easiest way of handling it. You have to be careful in terms of cutting the privilege too wide in allowing people who have a rightful suit against members. Anyway, that was the intent.

Mr. Chairman: We can ask staff to draft something along those lines for your consideration and we will put that in front of you.

In the course of the hearings, there was a fair amount of discussion about attempting to draft something that would be notice to the law society or to lawyers in general to make them aware of it. Do you want a draft in that regard? Okay.

There was some discussion as well about security and its role. For example, when we went to Ottawa, I was impressed that this kind of incident is prevented by means of the fact that when you enter the building you have to identify what your business is to a security person there. You would not have an instance like this happening there because there is a screening mechanism. This building is wide open. If you want, you could draft something in that regard, or you could leave that for another day when we deal with security matters.

Ms. Fish: If the committee is dealing with security matters, as it may on some future day, that would be the time to deal with whether we should query members of the public coming in. The service of a writ is a serious matter but it is not a matter of health and safety, if I can put it that way. I think we would want to be most intrusive in an area where a member's life may be endangered. If we have not gone that step on such a matter today, I would be very hesitant to recommend doing so on a civil matter.

Mr. Martel: If we make it clear that they cannot come in here, we do not have to worry about security; if they know that, they cannot come in here to serve papers. They can get by, but they are in hot water the second they come in this building and try to serve. If we amend the legislation that says you cannot do it, the guy who comes in is contravening the act. You are not going to have to worry about whether they can do it.

Ottawa is kind of informal. It is not written in the act, I do not think; it is just that you cannot get in the door. But if we are going to say in the act, and clear it up as we are recommending, then I do not think we have to worry about the security thing, because first, the efforts of the guy who comes here and tries to serve it would not be worth the paper it was written on, and second, he would get himself into serious trouble.

Mr. Sterling: I guess the question that could be put forward is, if the act were changed so that this Legislative Building in total were clear in the act, should you put the sanction in the act that it would then be a prosecution?

Mr. Martel: We would put that in the regulation. For the sanction, we would put that in a regulation.

Mr. Sterling: You cannot put a sanction in the regulation.

Ms. Fish: It has to be in the act. It has to be defined in the act. The sanction has to be in the act.

Mr. Martel: You are saying that you have to put the amount of the sanction.

Mr. Sterling: If somebody served, then you could presumably charge him with a provincial offence or you have to go through this process. That is just an option.

Mr. Martel: We will tell him that we will give the head of the law firm a day of sweeping the streets in Toronto. They will never serve it here.

Mr. Chairman: The other matter that was discussed previously--and we have a letter on the committee's agenda--was a concern about the role of people who are employed by members and their liability in such matters. Is there any indication that you want something drafted around that matter?

Mr. Turner: That is something about which I feel rather strongly. I think I said before--and I still believe it--that there is no way I can delegate my responsibility as a member to one of my staff members. All of us, as members, have been elected to represent our constituents. I do not remember at any time anything on the ballot saying, "or your representative." I really think that should be made abundantly clear.

Mr. Chairman: Do I have some kind of consensus to proceed with drafting of something in that regard?

Mr. Sterling: I believe (inaudible) that is related here is to prevent the interruption of a meeting or to prevent the interruption of your first job as an MPP while you are here. I do not know how you can then extend the fact that if somebody comes in and serves one of your assistants with a writ that this upsets your meeting or whatever it is; it does not go to the heart of where the privilege lies, and therefore I could not sustain in my own mind--

Mr. Martel: What are we saying? Are we saying they cannot come in here to serve a member or they cannot come in to serve papers, period?

Mr. Sterling: They cannot come in here to serve a member.

Mr. Martel: No. I say they cannot come into this building at all to serve papers. They stay the hell out. They have all kinds of places they can serve papers on me or my staff. This is not the place they do it; the sooner they learn that the better it is.

Mr. Chairman: There are three or four ways you could go about this. You could set aside totally the question of whether anybody is liable for actions and simply say that you may be served with papers but you cannot be served in this building, while a committee is in session or whatever. It seems to me that is one way to cut on that.

Ms. Fish: I am inclined to agree with Mr. Martel on the matter of paper service, not from the perspective of extending to members of staff the privilege enjoyed by members of the Legislative Assembly but rather on the disruption side, and I think that is what was being suggested.

For example, suppose our Hansard reporter were to be served in the middle of committee. That would be as intrusive and interrupting of the committee's work as if an individual member of the committee were to be served while it was in sitting.

I think there is some merit to that view, and it is obviously simple enough, when the person is not a member and is not covered in the same way by privilege, to have the service anyway, just as it is possible to serve a member outside the Legislature.

Mr. Bossy: I am a little concerned when we talk about papers being served. How many times do I have people walk into my office? I do not appreciate them walking in, but as we said, this is a wide-open place. They serve you with papers, a representation, whether it is a coalition or whatever it may be, and they come and interrupt your office. We know what kind of practical--we would say nearly threats--that they are going to publish it in the paper if you do not support it and those kinds of things. Let us define "papers" being served to a member.

Ms. Fish: No. We were talking about legal service.

Mr. Bossy: Strictly that?

Mr. Martel: Let me speak to Mr. Bossy's concern. That is the question. Mr. Breaugh and I and our friend from Ottawa have visited Quebec; we have visited Ottawa. The whole question of who gets in and how they get in is for another day. In Ottawa, you do not get in. You were there, Mr. Bossy, so I do not have to tell you what Ottawa is like. The question for us is, who do you let in? I think that all comes under the whole gamut of security and how people to get in to see members and so on.

I think we are talking apples and oranges here. I understand your problem, but I do not think it has anything to do with the topic that is before us right now. I understand the concern about who gets into your office and how they threaten to publish things. I always tell them to go ahead; it would probably help me if they would publish something. I encourage them to do it.

Mr. Chairman: Is there any other matter that you would like the staff to do some drafting on?

Mr. Mancini: I think the staff should draft whatever they want, and then we will take it back to our respective caucuses.

Mr. Martel: What we want, not what they want.

Mr. Mancini: I mean as far as what we have talked about today.

Mr. Chairman: It seems to me then it would be advantageous to give them some time this afternoon to do that. Unless you have some further business, we could adjourn now and come back at 10 tomorrow morning, when we may have something like a draft report for your consideration then.

Mr. Bossy: You are saying that basically you are drafting a report based on the evidence that has been presented but not based on any further comments or suggestions concerning the details of the wording that may be used, without them being placed with a motion?

Mr. Chairman: No. I am saying that I do not hear any other motions and I do not see any others, so the staff will go away now and draft a rough report for your consideration tomorrow, based on the information you have been given today, and I think there were two or three other matters that were added to it. They will put some draft wording in front of you tomorrow. You can accept it, reject it, amend it or do whatever you want with it.

Mr. Martel: If you want to draft something, Mr. Bossy, draft it tonight and bring it back tomorrow.

The committee adjourned at 2:55 p.m.

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M-79

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

WEDNESDAY, APRIL 8, 1987

Morning Sitting

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Treleaven

Hennessy, M. (Fort William PC) for Mr. Turner

Miller, G. I. (Haldimand-Norfolk L) for Mr. Morin

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, April 8, 1987

The committee met at 10:14 a.m. in room 230.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: Okay, we are ready to proceed. Just before we get started then, we have a draft that you have in your possession now. It would be my intention to try to go through the draft today. It is a little bit rough and it needs to go through the word processor at least one more time, but I suggest that what we could do is to proceed to go through that.

If there are other sections that you want to put in or if there is some editorializing that you want to do, if you give us some indication of what you would like, we will assist you with the wording. If there are motions that you want to put, again, as soon as you can give us some indication of that, we will be able to incorporate that. Now are there any questions about this? Mr. Bossy, did you have a question?

Mr. Bossy: I would like to ask, with the indulgence of the committee, if we could have a 15-minute recess for a caucus discussion on part of this.

Mr. Chairman: Okay. I do not think there is any problem with that.

Mr. Mancini: Well frankly, I do not know why the amendments to the Legislative Assembly Act are being attached to the matter concerning Mr. Gillies. That is not going to be (inaudible).

Mr. Bossy: We want to affirm our position and we would like to have 15 minutes.

Mr. Mancini: It is a separate matter.

Mr. Chairman: Sure; that is fine.

Mr. Mancini: That is a separate matter altogether.

Mr. Chairman: Okay, so we will adjourn for 15 minutes and resume at 10:30 a.m.

The committee recessed at 10:16 a.m.

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Mr. Chairman: Are we ready to proceed again? Let me try to take this in sections and see if we can put at least some of it to rest.

Before we start, I think we want to allow ourselves the opportunity to do some editorializing, redrafting and rewording, at least to get the printing to look alike. Before we get to a final form, we will want to have a third draft where we will clean it up, put some headings in and get the typing to

conform. If that is agreeable to you, we will do it one more time and bring it back to you so you can have a final look at it.

The second thing is, I think we have agreement, at least on the section that might be referred to as the chronology. There is a change located on the first page. It is the section that is underlined. There were two sentences added there. Is there any other change that anyone wants in terms of the chronology? Let us leave the second section aside for a moment.

Mr. Mancini: In the October 28 section, there was a change that had been requested by Mr. Sterling. He wanted to have in the chronology of events a statement that something which is--it is in here. It says, "However, the service of the statement...could have been made up to six months..." "Up to six months" is not part of the chronology. That is an editorial comment.

My comments afterward were almost similar to what follows that, which is, "According to Mr. Lederman, Stikeman, Elliott were asked to serve the statement of claim quickly." That is correct, but I would like to add that they were asked to do this quickly as that is the practice of their law firm, as was the testimony given to us during the committee.

Mr. Chairman: You want something like, "That is" or "was the practice--

Mr. Mancini: "That is the practice of their law firm," because that is what he told the committee.

Mr. Sterling: In most cases, the lawyer takes the instructions of his client as to when to serve the statement of claim or how the process should go. I thought that is what he said he was doing.

Mr. Chairman: Is there any objection to the addition of those words? Basically, yesterday all that happened was that one sentence was added at the request of Mr. Sterling and one sentence was added at the request of Mr. Mancini. We have a request to add one more sentence.

Ms. Fish: I have a problem, because my understanding of the testimony was that Lederman specifically said the firm took instruction from the client and the issue of timing on service was a matter of client instruction. Perhaps if Mr. Mancini can point me to the Hansard that would indicate I have a misapprehension in that regard, that would be fine.

Mr. Chairman: Do you have it?

Mr. Mancini: We have it for you.

Mr. Chairman: Okay.

Mr. Mancini: Wednesday, February 18, 1987, afternoon sitting, page M-15.

Ms. Fish: Just give me a moment while I find my copy please. What page?

Mr. Mancini: Page M-15.

Ms. Fish: Where?

Mr. Mancini: Let us go down near the middle portion of the page and find Mr. Warner's name. Mr. Warner is speaking and he says:

"In this case, we are looking at January 27. We know, by looking at a calendar, that there are two or three working days from when it was actually served until January 27. You were near the expiry on this.

"Mr. Lederman: That is a good point. The period stops--that is, the three-month period--when you issue a statement of claim. You have to issue the statement of claim within the three-month period, not necessarily have it served within that period.

"Mr. Warner: As long as you issued it. When did you issue it?

"Mr. Lederman:"--and this is the point I am making--"We issued it on January 14. Our practice is not to hold back. Once we issue it, we then move on to the next step and pass it on for service."

Ms. Fish: Once a decision has been to issue a statement of claim--

Mr. Mancini: Their practice is not to hold it back.

Ms. Fish: I do not wish to be difficult, but I simply want to make the point that once a direction was given to issue the statement of claim, it was correct that he testified that it is normal for them to serve. However, the point being made in the preceding sentence is, and I just want to read it again, "However, the service of the statement of claim could have been made up to six months after the action was commenced." According to Mr. Lederman, Stikeman, Elliott were asked to serve the statement of claim quickly.

Mr. Mancini: Which is the practice of their law firm.

Ms. Fish: I think you are confusing two things. I think you are talking about an approval by Fleischmann on the form of the statement of claim and the question of whether, once approval is given, service proceeds. That was what Lederman was saying. Lederman was telling us he had no approval prior to that time on the form of the statement.

Mr. Chairman: Are there any other comments on whether we insert these words? Do we need to vote on this?

Mr. Warner: No, put it in.

Mr. Chairman: I really do not see it as being very controversial. I have no objection if we just insert it.

Mr. Martel: All the world will come to rest.

Mr. Chairman: Are there any other changes you would like made to the chronology of events? Are we in agreement that will stand as part of the report?

Ms. Fish: They could have issued that statement of claim over quite a period, including prior to when they did so.

Mr. Chairman: Yes.

Ms. Fish: Lederman was very clear that they did not issue it earlier

because they did not have the direction from Fleischmann. I have some difficulty with the wording, which would leave an impression that approval on statement of claim occurred at the earliest possible opportunity, because under the testimony given by Lederman, it did not.

Mr. Chairman: I would understand the argument a bit better if it was not already in the report that according to Mr. Lederman, Stikeman, Elliott was asked to serve the statement of claim quickly.

Ms. Fish: That is right.

Mr. Chairman: If that sentence is in there, I do not really see the sting in the argument.

Ms. Fish: I just think that is the way it should stand.

Mr. Chairman: Do you want to vote on it?

Interjection: It is fine the way it is.

Ms. Fish: I just think it should stand the way it is.

Mr. Chairman: Okay. I am going to leave it in.

Mr. Mancini: What was that?

Mr. Chairman: It is in. Your request to put those words will now go in.

Mr. Mancini: They are not going in?

Mr. Chairman: No.

Ms. Fish: No.

Interjection: They are in.

Mr. Chairman: Do you want to vote on it?

Ms. Fish: I do not understand what you are asking, Mr. Chairman.

Mr. Chairman: I have had a request from one member to add some words to it.

Ms. Fish: I thought you were agreeing to add words beyond what is underlined.

Mr. Chairman: Yes.

Ms. Fish: I am trying to make the case that I think what is underlined is sufficient, accurate and clear and that the member is opening an area that is not quite as clear by adding what he thinks is a modifier, which I think gives an impression different from the testimony.

Mr. Chairman: I am asking the committee if it thinks it requires a vote on the matter.

Mr. Martel: And everybody said no.

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Ms. Fish: Did I misunderstand and say that you agreed to the additional words?

Mr. Martel: I think you did.

Ms. Fish: I beg your pardon. I understand. I just want to be clear. Thank you very much.

Mr. Chairman: Okay. Now if we can leave that section and go to the next section, which is actually a second draft of what Smirle had before you yesterday. I will point out that I have a notice of a motion. Do I take it it is from Mr. Mancini or Mr. Bossy?

Mr. Mancini: It is from Mr. Bossy.

Mr. Chairman: We will deal with that when we have dealt with this one.

Mr. Martel: Do you want to deal with the rest of it and then add the amendment, or do you want to try to add the amendment to it before?

Mr. Chairman: I take it the amendment would follow at the end of the next section, would it not? Just in terms of where it would be placed.

Mr. Martel: I would ask my friends across the way just to save that. Let us deal with this, and then add the amendment wherever they want to add the amendment.

Mr. Chairman: Yes.

Mr. Martel: Okay? Rather than try--

Mr. Bossy: It could come immediately before where your committee recommends the House take no action.

Mr. Martel: Yes.

Mr. Chairman: Okay, let us deal with the draft as we have it, and then we will deal with the motion and place it wherever you see fit.

Mr. Bossy: I just thought that if it was placed on the table that since there is so much repetition and discussion, it might become part of the discussion.

Mr. Chairman: Yes, that is fine.

Ms. Fish: Mr. Chairman, can I understand where the proponents of the motion that would amend propose to have it placed in the report? The proposed placement would have potential for changing the report and may change comment that I would wish to make on the remainder of the data.

Mr. Chairman: I give you the indication now that I intend to deal with it after we have dealt with the draft. Mr. Bossy, it is your motion. Do you have any indication that you would like to share with us now as to where you want it placed?

Mr. Bossy: I would say just prior to where it says, "The House take no action against any individual involved in this matter."

Mr. Chairman: You would probably want it inserted in front of that first recommendation. Let me deal with it this way. We have tried to avoid a lot of editorializing and to summarize in a very succinct manner the matter of privilege and all of that.

I think probably we can take more editorializing if people want to do that, but I sense we are going to have a little difficulty with it. My preference is to allow us to leave the written portion as is and deal with the recommendations as straight recommendations. There are three recommendations that are drafted here, and we have a notice of a motion that would essentially make a fourth one.

Unless there is an objection to it, I would rather not spend all day haggling over what copy is in here and get directly to the recommendations themselves. It seems to me if we resolve those issues first, if you want, we can then add more copy or delete or whatever, but I do not want to verbalize a lot on this. It seems to me the first recommendation does deal with the crux of the matter, and it is that the House take no action against any individual involved in this matter. Any comment on that?

Ms. Fish: Mr. Chairman, I very much appreciate your attempt to introduce efficiency into the committee's discussion, but I do want to suggest that the motion that will stand in Mr. Bossy's name with its editorial comment changes and alters the context of that recommendation quite considerably. In order to meet your wish to be efficient in this matter, I recommend that that motion with its editorial comment should be dealt with prior to dealing with the recommendation in order to understand the context in which the committee would be making that recommendation.

Mr. Chairman: I am in the committee's hands, whatever it wants to do.

Mr. Warner: I cannot see that it makes any difference.

Mr. Chairman: I think you have to resolve the issue one way or the other. You can do that by either dealing with the recommendations first or dealing with the motion that Mr. Bossy has put forward. They are not exactly contrary, but I understand what people are saying.

There is a distinction to be made here. I guess you would be establishing your priorities. If you want to deal with the first recommendation before you deal with Mr. Bossy's motion, you will set the course of things here. It was my sense that that was where you were going, but if I am wrong, tell me.

Ms. Fish: I am simply trying to suggest that, if Mr. Bossy has indicated his intention that, if successful, his motion would be inserted prior to "Your committee recommends that," shaping the context for the recommendation, there is merit in having that discussion at the point at which it first arises.

Mr. Chairman: We can have it either way. If the recommendation were worded in such a way that some punitive action was being recommended by the committee, there would be a whole different tenor to this debate. My sense of the committee is that you are not really interested in that.

On previous privilege cases, we did draw the line there. If it is clear enough that some sanction should be taken, you do tend to write a much different kind of report. If it is a case of technical breaches, if there is a judgement call and people are not terribly sure, I do not recall an occasion when this committee has ever recommended any real sanctions, but it is up to you. It makes no difference.

If it would facilitate matters, perhaps it would be easier at this point in time. We have the draft on the table and the motion on the table. We can have another general discussion about it, any way you want it.

Mr. Sterling: I thought that yesterday and the last day that the committee sat in February, we decided we were not going to try to read what the intentions of the various people were in this, and the Liberal motion judges the intentions of both Mr. Fleischmann and Mr. Gillies. It says Mr. Fleischmann is innocent and Mr. Gillies is guilty. That is what this whole amendment is all about.

If that is the case, then that takes me out of the whole ambit of this report and puts me in direct conflict with what I thought was the intent of the committee that was set in February, when we closed off the witnesses on this. It draws the conclusion that Mr. Fleischmann did not intimidate Mr. Gillies, but we do not know. We did not even talk to Mr. Fleischmann about what his part was in the whole thing. It says that Mr. Gillies must take responsibility for the fact that the statement of claim came in. In other words, he drew the people in. That is just bunk.

Mr. Warner: That is not what he said.

Mr. Sterling: What is the conclusion? He must also share responsibility for the fact that it was served on him during the committee?

Mr. Warner: Right. It is factually correct. Remember the testimony.

Mr. Sterling: The testimony of Mr. Gillies was that he did not know anything about it before that morning.

Mr. Warner: His assistant knew.

Mr. Martel: He knew it in the morning.

Mr. Warner: He knew at nine in the morning.

Mr. Martel: He knew that somebody was going to serve a letter on him.

Mr. Warner: According to his testimony, he knew at nine in the morning and his assistant knew three days earlier and decided not to do anything.

Ms. Fish: No, according to the testimony, his assistant did not know that this was service, but understood it to be hand delivery, and that was conveyed to Mr. Gillies in the morning.

Mr. Warner: No.

Ms. Fish: Look at the affidavit. Look at the testimony.

Mr. Warner: She knew three days earlier and chose not to do anything

about it for reasons that escape me, but that is what she decided. I guess that under the theory of responsibility--not knowing the rules, you cannot simply claim ignorance: "I did not know the rules, so I did not do it. I did not know that the member could not be served, so I did not bother doing anything about it or informing the person that the member could not be served."

That is not good enough, and we know that. Your assistants have certain responsibilities, as do members, to find out what the rules are. So what the sentence says is that he and his staff must share some of the responsibility for the fact that it was served while they were sitting, and that is factually correct.

Ms. Fish: I have a very real concern in this, and I will set it out. We are now, at this point, talking about the question of going behind testimony to credibility, and I was fairly shortly brought up by my friends in the New Democratic Party on the suggestion that going behind testimony and calling into question credibility was a very grey area indeed and that we ought not to be pursuing that.

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The affidavit that was filed by Ms. Artmont and her testimony were clear. She indicated that she did not know this was service, that she was not told this was service, that her clear understanding was that this was a matter of personal hand delivery. That is what she indicated.

In his testimony, Mr. Clamp indicated that he might have said service but he might also have said deliver a letter, that he might have said legal documents, that he might not have said statement of claim or writ, and went back and forth. His testimony moved. It raised the question of what was genuinely understood at the time of the conversation and what would have been appreciated.

That becomes extremely important, if it is the view of some committee members that they want to go behind the affidavit and the testimony and suggest that what was stated under oath in an affidavit and then under oath in testimony here did not represent what was the case. I think it becomes another kind of time line for the committee and another kind of discussion. It is for that reason that I am very concerned, Mr. Warner, when you make the clear statement that Ms. Artmont knew that a writ was to be served that morning. Her testimony is clear that she did not.

You may draw your own conclusion in evaluating the evidence, as may I, but if we are going behind the sworn testimony and into the question of credibility of the witnesses, then I think it opens it up very substantially from where we are. I do not think it would be at that point reasonable simply to do so on one side only. I just offer that thought.

I am concerned, therefore, with the wording that would, among other things, say in the second part of the motion, "However, Mr. Gillies and his staff must also share the responsibility for the fact that the statement of claim was served on him during a sitting of the public accounts committee."

If Ms. Artmont did not know that this was a statement of claim to be served, if she understood, as she indicated in testimony, that it was a hand delivery of a letter or some documents, that is quite substantially different from the question of service of a statement of claim. She also repeatedly indicated that she gave a wide variety of dates and times when she had a call

from someone who had indicated that materials had to be delivered to Mr. Gillies.

It is perhaps worth reflecting on that. I think that wording would leave the clear impression in the reader's mind that there was foreknowledge that what was intended was service and that an appointment was made for service, and I believe that the testimony of both Mr. Gillies and Ms. Artmont indicates that they did not know that, that this was not their understanding, that this was not what they believed to have been happening up until that morning at committee.

Mr. Bossy: We can go back through all the evidence and find statements, but we are presently discussing actually in our motion right now, which has not been placed, to the effect--even though it should become part some place at a time where I should be placing it. I thought we were going to discuss the conclusions that were here prior to that, whereby we indicate that what happened was really a contempt of the House. This is the determining factor, to conclude that there was a privilege or whatever for the member.

The preamble before the recommendation is based on the act. It goes right back to the act. I have some difficulty looking at the conclusion here that we find contempt and then following it--and we will discuss that further later--with a recommendation that the act be changed. Why should the act be changed if it already served the purpose for the case with which we are dealing? Why should that become part and parcel of a report on the Gillies situation? The recommendation for changing the act would not come forth unless there was something that would lead us to believe that there is an opening to justify the serving of that document here.

Mr. Sterling: Because there is a legal opinion for everybody in Ontario to read.

Mr. Bossy: Yes. There is a legal opinion, but we understand that when that legal opinion came before the standing committee on procedural affairs, it was not accepted. We have to conclude then that we continued all these years--forgive me, I do not have the date when the act came into force--that it was good enough for the previous government, and there were cases that came forth and were dealt with based on the act as it was.

Now we, all at once, not only consider a change in the act but also make a statement based on what the act is at present. I have a hard time trying to try to reconcile those two. Is it to accommodate? Have we found, in this case we have dealt with, the evidence is that the act does not really cover what might have transpired? We are indirectly discrediting these people. In other words, we are talking about discrediting a member and discrediting a law firm--that is what we are doing--for improperly serving.

We can talk about two things here. First, were they led? That subject has come up many times and there is all kind of evidence, as you are aware. Second, what was the responsibility? We are trying to say that there was a responsibility on the legal firm that its servers should have complied with what was necessary to comply with in this building. But, then, would a member not be responsible, somewhere, for his staff?

With the remarks our colleague made here, we have to conclude and believe that he did not know until that morning, but his staff knew. This is the same as the server. If his staff did not know, the server did not know, so we are back to equal. There is someone above here on each side who is

responsible for knowing. We also have to conclude that, on the morning this happened, Mr. Gillies was made aware.

I will even go as far as to say that, even if we do not talk about the legal aspect, there was going to be a letter served to them in this room. Mr. Gillies never objected to that when he received it. He did not know whether he should accept it. But it was also a very clear fact, if you go back here in our chronology of events, it is fully visible from everything that has been said that it was a prearranged meeting between Ms. Artmont--

Mr. Sterling: That is not true, Mr. Bossy. That is not what the evidence said. The evidence said there was a schedule given.

Mr. Bossy: The chronology, then, is wrong.

Mr. Sterling: This is such garbage.

Mr. Bossy: It goes on here somewhere where it says they were given Wednesday or Thursday, and Ms. Artmont and, I believe, Mr. Patton were discussing a convenient time to meet. Nowhere have I seen that Ms. Artmont made any indication that there was any other convenient time or any other place that would be suitable to meet. We did not hear that.

1100

Mr. Sterling: You had better read the evidence.

Mr. Bossy: Well, right here. The only time she knew the two would be together was the morning of Thursday. This is what I read in here. We have that evidence. As a farmer would say, we are threshing old straw. The facts are here.

There are some responsibilities on both. We are looking at the heads of both. We are looking at the legal firm being responsible for the serving, but at the same time, at the member being responsible for accepting or his staff arranging it in a place that would not be the right place, in this building, where he has privileges. As far as going beyond that is concerned, to say that we can presume--and the statements have been made here--there has been a presumption of the benefits to Stikeman, Elliott to do that here, but we can also presume the benefits to Mr. Gillies for having it done here, so we have not got that and we want to leave that out.

I am just saying in my motion that there is some responsibility from both sides. Maybe it was not carried out in the most proper way, but a member has responsibility here too. If the members do not have responsibility, then--I guess I am just going to leave it at that for now.

Mr. Martel: I think there are two things wrong with the statement. First, the first paragraph: If I recall the debate in the Legislature of the various members who sat on the committee, as a whole they thought they were being intimidated. I think my memory serves me correctly that I heard more than one member say that they thought there was an attempt to intimidate all the committee members who might be looking into the Huang and Danczkay affair. I think there should be a friendly addition to that, "to intimidate Gillies and other committee members."

Second, to suggest that the statement of claim was served might be wrong. Gillies knew, and certainly Artmont knew because she made the

arrangements for a document or a letter or whatever you want to call it that was going to be handed to Gillies in committee. That is factual. Nobody can hide that they knew something was being given by someone to Gillies and to Artmont. To suggest that they knew it was a statement of claim--I cannot prove that. It is very simple if one just goes back and looks at the transcripts. I had Hansard play back the video to me a couple of weeks ago. In fact, they knew something was happening.

What has bothered me about the whole of those proceedings was the conduct--forgive me--of Ms. Artmont. She knew someone was coming and did nothing about it to warn Gillies. I have repeated that statement half a dozen times.

While I am not prepared to see "statement of claim" in there, I am prepared to see the words "a document" or "a letter," or whatever you want to call it. They knew it was coming. I think we concluded a long time ago that it was really stupid for the legal firm to act the way it did it, give it to the server and not check it out. That is a reality I think we all agree to. We might not want to agree to it publicly, but in our own minds we may.

I think there is some sense of agreement--there cannot be any dissension in the fact that we now know that they knew something was going to be handed to Phil that morning. I do not know what it was they thought they were getting--the Easter bunny was here early or something like that or Santa Claus was a day late--but they were getting something. That is the whole stupidity of what transpired. To suggest that they come here and give it was asinine, and that an assistant did not tell the member somebody was coming to give him a goody and that they made arrangements for it to be served in the other room downstairs was stupid. That is what has left a lingering in some members' minds whether there was a political game going on.

That is why I said you cannot judge motives and I do not intend to do so. I am not going to try, but they knew there was a document that was going to be given to Phil. You can argue whether it was the sort of document described here or some other thing, but you cannot argue whether they knew they were getting something. I do not care how you cut it or how you try to word it or the kind of weasel words you want to use; they knew something was coming.

I do not intend to sit here all day and argue over the fact that maybe it was not--I agree in this respect--a statement of claim. I do not know what it was. I do not know what Artmont was told and I do not know what she told Phil, but I know one thing--they knew something was coming. I am prepared to see some of that wording changed to take that out, but I am not prepared to see that fact of life removed.

I suggest there have to be two changes in that amendment proposed by my friend. On the first sentence again, committee members felt they were all trying to be intimidated by that. They thought that at the time. The second one is that we believe it should be "a document" or "a letter." You can put in the words you want; I do not care which ones, but you cannot shy away from the facts. I do not want to judge the motives because I cannot judge them, but I know the sense that was left there, so I do not intend to do that.

Mr. Mancini: Could we have this redrafted with my colleague's comments, so we can take a look at it?

Mr. Chairman: What might be useful is to conclude this discussion

for a while. I get a sense that you might want to do some redrafting if you intend to pursue it. Perhaps over the noon hour would be a useful time to do that. We can adjourn for a little while if you want to do that.

Mr. Bossy: Perhaps I can make a point of clarification. I believe if you read the line, it says, "Contrary to the comments made by Mr. Gillies following the service of the statement of claim...." Everybody knew what it was after the service of the letter or whatever. We knew, because this is our statement in the report, "following the service of the statement of claim...."

Mr. Mancini: We knew what it was.

Mr. Bossy: We knew what it was. Again, further in this, we knew what it was. Before, we were trying to decide whether it was a letter or whatever. After all the evidence was in, we found that it was a statement of claim. This is only a remark made on the basis "following the issuance of the statement of claim...." That is the only reason we have the statement of claim because that is the factual situation. But we can look at the wording.

Mr. Villeneuve: Mr. Sopinka, a man very learned in the law and counsel to the firm of Stikeman, Elliott, made a statement on M-10, which you have, and it goes as follows, "Mr. Kellock gave a very learned opinion." If you read that, he explains that "the House of Commons inherited the privileges from the imperial Parliament but the provincial legislatures did not." That legal firm acted under that premise. They felt they could come here and deliver this, whatever, in a legal fashion. It is right in there.

Also, Mr. Clamp suggested that personal service could have been to go to Ms. Artmont's house, leave the document with someone within that family, mail a similar document the next day, and within five days this is deemed to be personal service. In that case, why would he show up in a committee? Quite obviously, he had some directives from someone. Based on what Mr. Sopinka stated, quite obviously there was some intent here.

Mr. Sterling: First of all, I think the statement that "this committee concludes that neither Stikeman, Elliott nor Mr. Fleischmann used the service of the statement of claim...to intimidate"--I do not know. I do not know what Mr. Fleischmann thought or did or whatever. We never had him in front of this committee. We had Stikeman, Elliott. I am satisfied they did not. I do not know. I do not know what Mr. Fleischmann thought or did or whatever. We never had him in front of this committee. We had Stikeman, Elliott. I am satisfied that they did not, but I do not know anything about Mr. Fleischmann because we never had him. We never had that opportunity to question him here in front of this committee. I think to draw a conclusion like that without hearing--I think we should be silent on it as to whether he did or he did not--

1110

Mr. Martel: Drop the word "Fleischmann."

Mr. Sterling: I think Mr. Fleischmann should be dropped from that.

Mr. Martel: You would have the two lawyers who were here anyway.

Mr. Sterling: I do not know whether the comments made--what comments

by Mr. Gillies are they referring to in here? What specific comments are they referring to?

Mr. Villeneuve: I guess they are saying that--

Mr. Sterling: No, don't you answer; just a minute. I want to know what comments by Mr. Gillies they are referring to in this statement--what evidence?

On the second part of it, when they are talking about Mr. Gillies being responsible for the fact that the paper was served on him during a sitting of the public accounts committee, if in fact Stikeman, Elliott had sent a lawyer here to serve who knew the law and knew it was quite wrong to serve a member in the committee, I suggest what that lawyer would have done would have been to ask Ms. Artmont, "Would Mr. Gillies arrange with me to meet me out in the hall so that I can properly serve him with this document?" That is what would have resolved this particular problem.

The problem resulted from somebody going in who did not know the rules and did not think there was anything wrong with serving it because he was improperly instructed by whatever level as it came down. The responsibility, in my view, does not lie with the people who are receiving the documents but with those who are giving them. It is their duty to serve them properly. They have to perfect the service. It is not up to Mr. Gillies or Ms. Artmont to make sure you are serving correctly.

If somebody hands you a paper--they walk into the committee room; they walk into the back here and they hand you a paper--you do not know what to do with it. You are standing there with it or you are not standing with it. The committee meeting is going on. Do you create a hubbub? Do you kick the guy out? Do you call for the Sergeant at Arms or whatever?

The only evidence that Mr. Gillies knew something was in the wind was that, according to his evidence, he had heard from Ms. Artmont that morning in a telephone conversation at his apartment that Stikeman, Elliott was going to serve some legal papers on him. That was the first inkling he had. So he goes to the committee. Do you think that is enough to indict him in terms of saying he is responsible for the fact this process server came into the room and improperly served the papers on him?

I do not. I do not think that is proper. I do not know what his responsibility--you may say Ms. Artmont had a responsibility in terms of giving this individual her schedule and Mr. Gillies's schedule as to where they could find him, not necessarily to serve him but where they could find him in order to make an arrangement to go and serve him. You can be responsible for your staff, but you are not totally responsible for your staff, because if they make an error, I do not think the member should be painted with it in every case.

All I say is that if they had sent Mr. Sopinka down here to serve that writ and Mr. Sopinka had walked into the back of the room and talked to Ms. Artmont, he would have said to her: "Can I meet you outside? Will you get Mr. Gillies? Can we go outside and talk about where this thing can be served?"

That is where the fault lies and I find this is unfair to Mr. Gillies; I really do.

Ms. Fish: My last very brief point, which is the other side of the

coin to what Mr. Sterling has just been saying, is that if indeed what Mr. Patton had handed to Mr. Gillies was a hand delivery of a letter, there would be no contempt because as you have correctly pointed out and as any number of others on committee have pointed out, we all receive letters, notes, materials all the time.

We do not go around saying that the people who do that are in contempt. What produced the contempt was the service, the formal legal service, of the statement of claim. I simply go back again to saying that by her testimony, Ms. Artmont did not know that this was service of a statement of claim. By her testimony, this was hand delivery of materials, not service, there would not have been contempt. There would not have been a problem in committee.

Mr. Mancini: I support my colleague's view that his motion should be inserted into the report for a number of reasons. We all know that Mr. Gillies had received some legal documents from Stikeman, Elliott prior to Christmas. That is evident in our chronology of events. We have accepted that. We also know that sometime after Christmas the member said to his staff, "I wonder when we are going to hear from those people again?" That certainly was a matter that had not slipped his mind. It was a serious matter that he had not forgotten about.

We also know from the chronology of events that we have accepted as a committee that a call was made to Ms. Artmont. The caller identified himself as a person from the firm of Stikeman, Elliott, the same group of people about whom Mr. Gillies had said, "I wonder what they are up to," only a few weeks prior. The person informed Ms. Artmont that they had some--we do not know if it is a statement of claim--some legal documents to give to the both of them, which is quite interesting in itself. We also know that the caller said, "Wednesday and Thursday would suit our purposes."

Most importantly, we know that on Thursday morning, which is part of our chronology of events--I do not want to go over all of them; I do not want to waste the committee's time--Ms. Artmont identified herself. She took the initiative to identify herself to the individual who she thought was someone from Stikeman, Elliott. We know now the person was the server, She said, "Are you looking for me?" Then she was handed these documents. She looked at the documents and I am assuming that from being involved in this, she knew what the documents were after she saw them.

Mr. Sterling: Where is the testimony that she said, "Are you looking for me?"

Mr. Mancini: If we turn to page 5 of the chronology of events, at the bottom of the page it states, "Both Mr. Patton and Ms. Artmont sat at the back of room 151 directly across from each other. When they looked at each other, according to Mr. Patton, Ms. Artmont said, 'I believe you are looking for me?'" That was not disputed by Ms. Artmont. I believe she even made the same testimony during her discussions with the committee.

Ms. Fish: Where was that again?

Mr. Mancini: The bottom of page 5.

Ms. Fish: Where was her testimony?

Mr. Mancini: I guess over the noon hour we could pull it out.

Mr. Villeneuve: As a point of clarification, and supplementary to what my colleague Remo has mentioned, Wednesday and Thursday served the deliverer of that document--it served its purpose--and Ms. Artmont arranged around its schedules.

Mr. Warner: I will be brief. On the first paragraph Mr. Bossy has moved, I agree with Norm that we did not have Mr. Fleischmann before us as a witness. We are being asked to make a judgement based on the evidence that was presented. In fairness, I do not think we do not have any proof that Stikeman, Elliott, a very respected law firm, used the process as a way to intimidate any member or a committee. I agree with Elie, I think we should add "and other committee members." Obviously, if we remember from the motion that was sent forward to the House, the committee was complaining, not just the individual member.

1120

Mr. Mancini: May I respond for 10 seconds? We will agree to have that put in, but as a member who sat in the committee that morning, at the time I was more than upset, but as the information unfolded, as we heard evidence, I became less upset all the time. But we will agree to have that inserted.

Mr. Warner: Okay. What I would want to see is to strike "Mr. Fleischmann" and to add "and committee members."

On the second one, I think it has to be kept in mind that we have been asked to believe a number of things, including the fact that a staff person who, along with the member, was well aware that there were discussions about possible legal proceedings taking place and who had been notified earlier, this person, having received a telephone call on the Monday, was informed that a letter or a document, we are not sure which word was used, it was not clear from the testimony as to precisely which term was used, but one or the other would be delivered, had not informed the member. Three days later, the member for whom she works had not been informed by her that something of that importance would be delivered to him. We are asked to believe that.

In the circumstances, and in the turmoil that Mr. Gillies had experienced over a period of time, I am not sure it is reasonable to accept that the staff person would not inform her member within a three-day period that he was likely to be served some legal document, and yet we are asked, I think in all circumstances, to judge, if there was any reasonable doubt. As long as there is reasonable doubt, then you cannot say the person did such and such. There is still some reasonable doubt.

I guess we have to accept that she was not doing her job properly. But again, as harsh as it is, the responsibility still rests solely and totally with the member. If a staff person for a member fouls up, the member is responsible. We are the ones who are elected, not the staff people, and if the staff fouls up, it is the member who has to accept 100 per cent of the responsibility. That is a harsh thing, but I think that is reality. In addition to that, we recall from testimony that Mr. Gillies knew at nine o'clock.

If it had happened to me, I am not sure exactly what I would do. My guess is that I would inform the chair that I think I may be about to be served papers and I do not think it is permissible. I would have done something, not just nothing. So I think there has to be some responsibility,

but, to be clear, I think we have to use the words that were used in testimony. The term, "statement of claim" was not used in testimony, but "document" or "letter" was. In fairness, I think that is what we have to say.

Ms. Fish: A couple of things: First, by his own testimony and by her own testimony, whether the members choose to query the accuracy or not, they simply said by their own testimony, neither Mr. Gillies nor Ms. Artmont understood that a statement of claim was to be served. They understood that a letter or document was to be delivered.

There is a huge difference. Among other things, it is the difference between a member's privileges being abused or not, and it is the difference between contempt of the House and not.

I find it a little difficult to get into a discussion, for example from Mr. Warner, indicating that if he were in Mr. Gillies's position, he would have gone to the chair to say, "I think I am about to be served with documents. I do not know if it is legal," when Mr. Gillies's own testimony was that he did not understand that it was service. Rather, according to Mr. Gillies's testimony, he understood that it was to be a letter to be hand-delivered.

How many of us getting a letter hand-delivered would feel the need of discussing that with the chair, or how many of us getting a letter hand-delivered would automatically assume that it was a statement of claim to be served?

I put to you, Mr. Chairman and the members of the committee, that if members of the committee are wanting to amend the explanatory sections, and do so in a fashion that would leave an impression that someone who has been before us, particularly a member whose testimony clearly indicates that he did not know there was a statement of claim to be served, in fact did not know there was anything to be served, but that there was material to be delivered, that leaves a contrary impression in the material, then we are saying in the course of it that we believe that someone has lied under oath, particularly a member.

It may be that there are others who do not want to draw the distinction between delivery and service. I think it is a terribly important distinction because of the way committees and members operate and because in fact, under the legislation, the difference is what produces the difference in the fundamental finding of whether there has been a contempt.

The second thing is that there may be a variety of opinions about the calibre of work undertaken by a person on a member's staff, and some may be critical and some may be praising in their assessment.

Mr. Warner has indicated that we are being asked to believe certain things that I infer from the juxtaposition of his remarks he does not believe. I would simply offer the thought that we are also being asked to believe that a very prestigious law firm did not know what was on at committee and did not know, appreciate, intend or in any way believe there would be a correlation between a multimillion-dollar suit and a likelihood of a member not pursuing queries or investigation at public accounts.

Mr. Bossy: Just a very short comment. If you look at page five of the chronology of events, again going back to the conversation that took place at about 9 a.m. When you read through that, during this conversation, "Ms. Artmont said, according to Mr. Gillies"--we are going to use Ms. Artmont and

Mr. Gillies's testimony--"that 'she had forgotten to tell me earlier in the week that somebody had phoned saying they were representing Stikeman, Elliott"--a well-renowned firm; as you just said, Ms. Fish, whenever that word comes up, I am sure, in any office, you would take notice that it is a well-renowned firm--'"and they wanted to give me a hand-delivered letter some time this week.'

"Mr. Gillies then asked her if she knew what it was about and she said she did not, 'but we mused'"--and this is Mr. Gillies--'"at the time as to whether, as we recalled Stikeman, Elliott was Mr. Fleischmann's law firm and as to whether it was apropos of the same matter.'

"Ms. Artmont stated that she told Mr. Gillies that he might be getting a letter from a law firm, but did not recall naming the law firm. According to Ms. Artmont, Mr. Gillies was upset and asked questions with respect to the matter. Ms. Artmont then told Mr. Gillies: 'Do not worry about it, it is nothing. It is probably not Fleischmann, and if it is Fleischmann, they would not show up today, and they certainly would not come into committee.'

So they would be aware of their privilege or know that the member has that immunity within committee.

1130

Again, we were talking about the precincts in this place, but then tie that together to the arrangement for the occasion to occur. You can tie these statements together, and it sort of boggles the mind. As far as assumptions that there were ulterior motives behind this are concerned, then we go straight to the credibility and to--

Interjection.

Mr. Bossy: I do not like to go that route, but the only thing that we have to assume is that it happened here and all these things, that there were conversations in the morning and that there was no prevention by anyone to let it happen here, knowing when she made that statement right here, "...they would not show up today, and they certainly would not come into committee," there must have been some thoughts in Ms. Artmont's mind when she made that statement, "By golly, they should know this is a place that is verboten to come into."

Mr. Mancini: Mr. Gillies was so ill-informed that he was able to go right from the committee to the Legislature without a meeting with Ms. Artmont.

Mr. Chairman: Let me intervene here. I sense we have been around the table enough on the matter. I think it is probably time to go away and think about this for a little while over the noon hour. I think there is a need to do a little--let me just draw some conclusions for your consideration if you intend to put this motion this afternoon.

I think you have heard members indicate there are some wording changes that would be required in the amendment to be accurate. For example, if you want to proceed, I would agree with members that Mr. Fleischmann has not been before the committee and you have very little grounds to draw any conclusions about his actions one way or the other. Mr. Sterling is quite right on that, so I sense there is a need to strike his name in reference to any motion of this kind.

You may want to accept Mr. Martel's point that the committee itself, in addition to Mr. Gillies, was involved in the process.

We have heard a fair amount of discussion this morning about whether you can make any inference that anybody knew there was a statement of claim. I think the evidence is fairly clear that we did not know what the documents were, and we cannot understand how much anybody knew of what was coming. You can, I think, from the facts as they have been presented to you, say that Lyn Artmont knew a document of some kind was going to be handed to Mr. Gillies that morning, and that is about as far as you can go.

If you want to put something that makes reference to that, I think that is your limit. You do not know her knowledge of the document itself; the best you can do in that regard is to say something to the effect that on a previous occasion someone had called her and informed her that a document was going to be handed to Phil Gillies on that morning. That is about the extent of it. You can say subsequently that it turned out to be the statement of claim, but you have to do your wording a little bit more there.

I have not heard members take exception to any of the other recommendations that are there, so what I would suggest we do is adjourn now. You have some time to do some drafting if you want. We will come back this afternoon. If Mr. Bossy puts forward a motion of this kind, I will be presumptuous enough to deal with that first this afternoon and then to go through the other three recommendations.

We will stand adjourned until 2:00 p.m. When you come back, I would not anticipate a whole lot of discussion as we have had this morning. I would rather it get a little more specific. If you have disagreements, which is legal, we will have some votes on it. All right?

The committee recessed at 11:34 a.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

WEDNESDAY, APRIL 8, 1987

Afternoon Sitting

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Fish, S. A. (St. George PC) for Mr. Treleaven

Hennessy, M. (Fort William PC) for Mr. Turner

Miller, G. I. (Haldimand-Norfolk L) for Mr. Morin

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, April 8, 1987

The committee resumed at 2:15 p.m. in room 230.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: We have a quorum and I think we can get started.

We have a small correction made to the draft report you received this morning. You will get another copy of that. I think it is a spelling change and there are some wording changes too.

Interjection: In section 39.

Mr. Chairman: This afternoon, what I would like to deal with is Mr. Bossy has prepared a motion that is somewhat different from the motion he had this morning. I believe you have copies of that now; it will be the first order of business this afternoon.

Mr. Bossy moves that the following be added to the committee report:

"Contrary to the comments made by Mr. Gillies following the service of the legal documents in the public accounts committee, this committee concludes that Stikeman, Elliott did not use the service of the legal documents during the public accounts committee proceedings to intimidate Mr. Gillies and the other members of the public accounts committee.

"This committee has concluded that a breach of a member's privilege has occurred. Stikeman, Elliott, in their capacity as the law firm issuing the legal documents, must assume some responsibility for the manner in which the documents were served. However, Mr. Gillies through his staff must also share the responsibility for the fact that a legal document was served on him during a sitting of the public accounts committee."

According to what you said this morning, I take it that you would like these words inserted prior to the first recommendation; is that right? There is the motion. Any debate on the motion?

Ms. Fish: I have considerable difficulty with the form of the motion. In my view, the report as written by staff in its first form was direct and straightforward, did not at any time choose to go behind the face of testimony given at this committee under oath, all of which it was and which stood on its own. These two paragraphs in this motion pick and choose decisions around when to go behind testimony and when not. I am extremely troubled by it and consider it to be unfortunate at the very least.

In the first instance, in the first paragraph there is a question of "Contrary to comments made by Mr. Gillies...did not use the service of the legal documents...to intimidate Mr. Gillies and the other members of the public accounts committee."

For starters, I would suggest that question was not put to Mr. Gillies; that question has not been put to any members of the public accounts

committee. I, for one, was a member of that committee on the day that it occurred. I have been one of those helping to raise, consistently, questions about the Huang and Danczkay loan and loan approvals and Mr. Fleischmann's involvement therein, which was the subject of discussion at that committee and which was the subject in part of the action launched by Mr. Fleischmann against my colleague Mr. Gillies.

In my view, there was a clear attempt to intimidate and harass, but to pursue that argument would require a discussion that would go behind the sworn evidence given at committee. It would require calling into question the evidence that was given and making a case that would indicate my incredulity at some of the evidence that was provided under oath. I have not done so and I have not asked for any such motion to be put. This particular first paragraph, however, in so far as it refers to Stikeman, Elliott, appears simply to accept the Stikeman, Elliott evidence at face.

There are two problems with the first paragraph: (1) the question of Mr. Gillies as to whether he felt intimidated or whether he felt there was an attempt to intimidate and the question to other members of the committee, and (2) the fact that in that first paragraph there was a clear willingness not only to take the Stikeman, Elliott evidence at face but to extend therefrom their evidence on intent and make a conclusion with respect to whether anyone else felt intimidated.

On the second paragraph, it strikes me that when we get down to the section dealing with Mr. Gillies and his staff, we do exactly the opposite. For some reason, there is the proposal here now not to take sworn evidence at face. There is now the proposal to go behind sworn evidence and to suggest that there is incredulity at the evidence and come to a conclusion that reads "...must also share the responsibility."

1420

That, I think, is extremely troubling because there is now a question of going behind the sworn evidence of some people who have been before the committee; namely, a member who has been before this committee and that member's staff. I say that because in the sworn evidence of both of those people before this committee, Mr. Gillies as a member of this Legislature and his executive assistant, Ms. Artmont, they clearly indicated that they did not understand that this was legal service, that they did not understand this this was a statement of claim. They understood this to be inquiry about delivery and of a letter.

The distinction--

Mr. Martel: There is nowhere in there about service. Let us not put something in there that is not there. I hate to interject, but that is what you are saying. You are putting in something in your comments that is not in the statement.

Mr. Sterling: It said "served."

Ms. Fish: Mr. Martel, I am reading a sentence. The sentence says, "However, Mr. Gillies through his staff must also share the responsibility for the fact that a legal document was served on him during a sitting of the public accounts committee."

Mr. Martel: Do you want to put the word "delivered"? We are playing games. Those are the facts that happened.

Ms. Fish: Mr. Martel, I am not playing games, but I think games are being played by other people on this committee. Delivery of a letter is not contempt of the House. Delivery of a letter, even at committee, is not an abuse of a member's privilege. What is abuse is the legal service of legal documents. That is the contempt of the House.

What I am trying to point out is that if the member and the assistant understood that the limit of what was being sought was the hand delivery of a letter or document and not service of a statement of claim, then they would not have had any appreciation that there might be an action that would abridge anyone's privileges or that there might be an action that would place anyone in contempt of the House.

Therefore, I cannot understand why, in the face of that, we would be suggesting wording that says they must share responsibility for a contempt having occurred--namely, legal service and members' privileges having been abused--unless members are suggesting that their sworn testimony was inaccurate or that it was not believed. That is how I get at it.

I do not think, Mr. Martel, that I am playing games in this because I am extremely concerned about the reputation of a member of this assembly and a member of this assembly's staff and the fact of sworn evidence being given. I indicated that while I might have a personal view on credibility of other witnesses, I did not move because of what I understood to be the committee's preference of not going behind sworn testimony to bring forward something else.

Mr. Martel: You move what you want.

Ms. Fish: I appreciate that I can. I am simply trying to suggest that I understood the committee, and particularly the direction of the chair, suggested that perhaps we ought not to be going behind sworn testimony. It is my view, and I would ask you to consider, that the only way you can say that Mr. Gillies and his staff must share responsibility for service of a legal document--which is what this committee found to be in contempt of the House and found to be an abuse of members' privileges--is by virtue of that member or that member's staff having failed to be accurate under oath or of members not believing that sworn testimony. I think that is very, very serious.

It is for that reason that I am very distressed and very upset with that sentence being there in the proposed motion to amend the report. I would come back to a position of saying that in my view the wording that was drafted by staff, which in no case went behind the evidence of any witness in the first draft, is the wording that I think most accurately reflects the testimony that was taken and does not seek to go behind the sworn testimony and suggest that some are believed in some respect and others in another.

Mr. Martel: Staff just drafts what is put before it, and if somebody had said yesterday, "Include that," staff would have done what it was instructed. I cannot hang staff for what my friends across the way want to include, and they want to move this motion. What you said was that you accepted staff's draft. I am simply saying that staff drafts what it is told to draft. The Liberals want to move this, so if you want to say you are prepared to accept their draft, that is fine.

The reality of what happened is there. You can argue on the first section, as you did, but I happen to believe in the final conclusion, that the law firm was not attempting to intimidate. That is my belief. You have a right to differ with me on that. I do not deny you that right, but after having

listened to the evidence, I do not think the law firm was trying to intimidate anyone. If you want to differ with that, that is up to you. But you are going to have to give me some evidence on which I can make that conclusion, because I listened carefully during the hearings and I could not find anything. If I saw anything, I saw a theoretically or supposedly great law firm that acted like a third-rate ball team. But that they were doing it on purpose to intimidate the members of the committee, well, I do not believe that. I just do not believe it.

Second, to suggest that they served the documents in a proper manner, and that is what the second sentence of the second paragraph says, is true. I do not think they did their homework in making sure it was served properly in here. They left it, if I understood it correctly, to the server. I do not think they were very sophisticated when they did not take the precautions necessary, but that is not what is at stake. The question at stake is whether, if one refers to the part up above, they did it in an effort to intimidate. I do not believe so.

Finally, Mr. Gillies's staff knew something was coming down the pike. She was called on Monday. She did not bother telling Phil Tuesday or Wednesday, but she told him Thursday morning, there was something. Is that not true? Did she not tell Phil Thursday morning? A little late maybe.

Ms. Fish: She understood that a letter was to be delivered. The difference is the difference between something being handed to someone in committee and contempt of the House. That is the difference.

Mr. Martel: No, no. That is a nice try, but that is not what is at stake.

The question is, did she know that there was a document coming? That is all that says. She knew, she told Phil, that there was a letter, a document--call it whatever the hell you want. They knew it was coming. That is what that says: "However, Mr. Gillies through his staff must also share the responsibility for the fact that a legal document was served on him during a sitting of the public accounts committee."

If that is not true, then I do not know what the truth is. That is in fact what happened. If you want to tie it back to that statement up above that "this committee has concluded that a breach of a member's privilege has occurred," that is a quantum leap you are making.

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Those are the facts, and they cannot be altered. It is in Lyn Artmont's statement. She says she got the phone call. She says she told Phil on Thursday morning. She told him they were going to have a letter. She told him how to identify her: she might be the only woman in the room. That is reality, and a document was served. If there is something wrong with that, tell me where I am wrong.

Ms. Fish: I will.

Mr. Martel: Go ahead, tell me.

Ms. Fish: I think what is wrong with it is that, first of all, in a single paragraph, you cannot separate the fundamental finding, which is that a breach of a member's privilege has occurred. You use the word "served." It is

the service of the document, not hand delivery of a letter, that is the difference between a member's privilege being abused and not, between contempt of the House and not, and to suggest that there is sharing of responsibility for service clearly implies prior knowledge that it was service and that it was not hand delivery of a letter or a document.

I keep coming back to that--

Mr. Martel: Could you answer a question?

Ms. Fish: --because it is clear that if what it was was a letter that was hand delivered, if it was not service of a legal document, there would not be any abridging of a member's privileges and there would be no contempt of the House.

Mr. Warner: She knew what was happening.

Mr. Mancini: How can you say that?

Ms. Fish: Her sworn testimony, Mr. Warner, was that she understood only that it was hand delivery of a letter, not service. That is her testimony. If what you are saying is that she understood that it was not hand delivery of a letter but rather that it was to be service of a statement of claim, then first, you are going behind her testimony, and second, if that were the case, then clearly there would be the sharing of responsibility. But her sworn testimony is to the opposite.

Mr. Chairman: I am going to intervene here.

Mr. Martel: What do lawyers serve? Do they serve legal documents? Do they bring legal papers, or do they bring the Easter bunny?

Ms. Fish: She did not understand service, and she said Mr. Clamp did not say "service" but "delivery," "hand delivery."

Mr. Chairman: Okay, I am going to intervene here. The wording that is before you does not attribute motives, nor does it say that Lyn Artmont understood what was being handed to Phil Gillies that morning. It only clarifies the fact that, whatever her understanding was, that was the document that was transmitted. It does not attempt to align blame. It does not attempt to delve into whether she understood what the document was or not. It only states the fact that there was a document served.

I will tell you what I am having a little difficulty with up here. If you do not like the way this is worded, I prefer to hear you try to find better words. I hear arguments on both sides going around, arguments we have had for two days now, and it is not very productive. If there is a better way to say it, find the words for us.

Ms. Fish: I guess the difficulty I have is that it is very hard for me to find better words if the fundamental difference is that there are members of this committee who believe a staff member and a member should share responsibility for service of something--

Mr. Chairman: No, I am going to stop you there. The members are trying very hard not to do that.

Ms. Fish: But that is what it says.

Mr. Chairman: The members are trying to stay on the ground where it identifies only the facts and does not attribute motives.

Ms. Fish: Mr. Chairman, the sentence is clear.

Mr. Chairman: We are obviously having trouble.

Ms. Fish: It apportions responsibility. The sentence is clear. It says, "...Mr. Gillies through his staff must also share the responsibility for the fact that a legal document was served on him." It clearly apportions that responsibility to Mr. Gillies and Mr. Gillies's staff.

Mr. Chairman: Is there something we could put on the end of this which would clarify it? I believe the intent is not to attribute motives, intentions or anything. For example, would it assist if we went on to say that she did not understand the nature of the documents that were going to be presented to him that morning and she should have or something like that? Is there a better way to say this? I think the committee is trying not to go into intent and motives. It is trying to be as factual as it can and to stay out of that. That is the attempt I see being made. I could be wrong. Is there something we can do that would help?

Mr. Mancini: The only point I wanted to make was that the committee agreed much earlier that members cannot give up their privileges for themselves or for the House. When we hear comments that the two paragraphs are not compatible, in fact, they are because a member can have his privileges breached and he can try, through his staff or however, to give them up at the same time. These paragraphs are, in fact, compatible.

Ms. Fish: In sworn testimony, Mr. Gillies and his assistant, Ms. Artmont, were very clear that they were not, to their understanding, in any way giving up privileges. The reason they were not was that they had no understanding that this was service. So the issue of whether they even thought they could give it up if there was service does not apply.

Mr. Chairman: Yes. We are in agreement on that. That is not where the argument lies. Frankly, I am having a little difficult time discerning what this argument is all about. If there is a need to alter the wording, fine. If there is a need to add words, fine. But, frankly, I am at a loss to understand the argument now.

Mr. Sterling: I find the intent of this particular motion a matter of a political nature rather than trying to come up with a resolution to what the committee heard. I think that is exhibited by the opening sentence of the first paragraph that says, "Contrary to the comments made by Mr. Gillies...."

If you read the transcript, Hansard, etc., Mr. Gillies made one mention of Mr. Fleischmann's lawyers serving--

Mr. Chairman: Let me stop you there, Mr. Sterling, to see if I can help us out of this. Would it help anybody if you struck the first few words in that sentence, "Contrary to the comments made by Mr. Gillies," and simply went straight to the point where you said, "This committee concludes that Stikeman, Elliott did not use the service of the legal documents to intentionally or otherwise intimidate Mr. Gillies"? Would that assist?

Mr. Sterling: That would assist. I am just saying the nature of the motion, the intent of the Liberal motion, is exhibited by those unnecessary words.

My conclusion of the evidence is, of course, different than that of other members of the committee because it has political connotations to it as well as other connotations.

I do not know how many people were involved in this whole process. Mr. Fleischmann was involved, Stikeman, Elliott, maybe one or two lawyers in Stikeman, Elliott, Mr. Clamp, Mr. Patton, Ms. Artmont, Mr. Gillies, etc. The best that I can say is that I am unsure as to who of those six or seven people is responsible on the bottom line. But, again, what we have here is trying to apportion the blame among two or three of the six bodies.

I, with respect, do not think that is fair, especially when you are saying the person the burden is not primarily upon--that is, the defendant in a lawsuit--the last thing you want to do as a defendant is to help the plaintiff along in his lawsuit. Why should you help him? He is your opponent. He is suing you for \$2.7 million. Why should you be obligated to try to help him out and serve these papers, in an individual sense? It is bizarre that the committee would come down and say the defendant has some responsibility in seeing that this is done properly. I do not understand that.

Mr. Martel: Why not?

Mr. Sterling: Why does Mr. Gillies have any responsibility?

Mr. Martel: You can twist it any way you want. That is not what is being said.

Mr. Chairman: I do not think that is the intention.

Mr. Sterling: I think that is the bottom line.

Mr. Martel: You are attributing motives now. We are trying to stay out of attributing motives and you are jumping right into it.

Mr. Sterling: I am not jumping into it. I am saying this motion jumps right into it.

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Mr. Martel: Okay. You just made the accusation. You have made an accusation that the motive of this member is to hang your colleague. We are saying we are dealing strictly with fact. We are not dealing with the motives nor are we prepared to deal with the motives of why Lyn Artmont did not tell Phil Gillies that a legal firm had phoned. I will not deal with that, because I then have to go into her head and understand what she is doing and I cannot do that. But you come along here and make that accusation of us. I resent that.

Mr. Sterling: That is fine.

Mr. Martel: That is fine, but that is as far as it is going to go because you are attributing motives.

Mr. Sterling: I am not.

Mr. Martel: That is the very thing we are trying not to do.

Mr. Sterling: I am saying there are no motives. This is a Liberal motion--

Mr. Martel: I do not care whose motion it is. You are attributing motives now, my friend. We are staying away from that. You tell me where the facts are wrong there and stop playing games.

Mr. Sterling: I tell you the facts are wrong in terms of what my colleague Ms. Fish put forward.

Mr. Martel: I did not believe her either, but she did not deal with the facts either.

Ms. Fish: I certainly did.

Mr. Martel: You tell me where the facts are wrong.

Ms. Fish: I did. It says "share the responsibility" for service. How is there shared responsibility for service if there is no understanding that there is service. How is that a shared responsibility?

Mr. Chairman: Okay. Let us get back on track.

Mr. Martel: Lawyers deliver Easter eggs, do they not?

Mr. Chairman: Elie, settle down.

Ms. Fish: They also hand-deliver letters.

Mr. Warner: I am going to miss this guy from Sudbury East. I can see why he is retiring. I hope this does not come as a great shock to the folks here that I suspect that about 11 people, the 11 who are gathered in this room, will take the time to read the words that are right now in front of us. But if you want to continue nitpicking for a little while, that is fine.

I certainly would agree with your suggestion that we simply strike the first part, from "contrary" down to the word "committee," and start the sentence there, "This committee concludes...." When you say "Contrary to the comments made by Mr. Gillies," obviously you are calling into question statements made by a member of the House.

Mr. Chairman: Let me stop you there. Is there agreement to remove those words?

Mr. Mancini: I am waiting to see the whole package.

Mr. Chairman: Okay. Have you moved an amendment to remove those words?

Mr. Warner moves the removal of the words "Contrary to the comments made by Mr. Gillies following the service of the legal documents in the public accounts committee."

Mr. Mancini: We would like to stack the votes.

Mr. Chairman: Okay, that is fine.

Mr. Chairman: Mr. Warner moves to strike the first part of the first paragraph, so that it would begin with the words "This committee concludes."

Mr. Warner: Where I am coming from is that we listened to a lot of testimony. We know we are supposed to come up with conclusions that are beyond

any reasonable doubt. The most significant and probably the only recommendation that anybody pays any attention to, if, indeed, anyone out there cares, will be number one. "Your committee recommends that the House take no action against any individual involved in this matter."

That is the base of it. If you want to nitpick around about other language that goes in, I do not really see it is worth while. I do not think it is a worthwhile exercise, but every member is entitled to put forward motions. The Liberals brought in a motion this morning, so we obviously have to debate it. I do not think it is such a worthwhile exercise.

The problem seems to rest with the second paragraph.

Mr. Chairman: Okay. Let me deal with your amendment first and then we will go on to the other. Is there any further debate on that amendment?

Ms. Fish: There is further debate. I clearly think the suggestion of deleting the opening phrase is an improvement, but I would say to Mr. Warner that it still stands as an improvement on a paragraph that has chosen to be specific. Back up for a second. Members of the committee have different opinions about which testimony they are confident of and which they may question. That paragraph chooses to be specific in indicating that in one case testimony is being taken at face value.

I also do not want to waste time in quibbling on words. The way I felt one could avoid that would be by returning to the draft that was first placed at the table, which Mr. Martel quite rightly pointed out staff did at the direction of the committee. The direction of the committee at the time was to avoid going behind the evidence of anybody.

The discussion around the words is stopped very quickly by simply having neither paragraph and going to what was submitted this morning from staff, which is what I would advance is something that can be agreed to.

The first paragraph, even with the amendment you put, Mr. Warner, singles out one area where there is some question on testimony and takes the majority opinion of the committee to accept that testimony at face.

Mr. Chairman: So are you for or agin his amendment?

Ms. Fish: While I agree there are differences of interpretation, as obviously there are in the second paragraph, in my view, the wording of the second paragraph, when it addresses--

Mr. Chairman: How about the amendment? Can you get back to that?

Ms. Fish: --the reasons, calls that testimony into question.

Mr. Chairman: Is there any further debate on Mr. Warner's amendment to strike certain words from the first paragraph? We can stack the vote and have it formally later, but in order to do that I need to call the voice vote first.

Those in favour of the amendment?

Mr. Mancini: Help me out here. The whole proposition put forward by my colleague Mr. Bossy--

Mr. Chairman: We can delay this vote if the majority of the committee agrees to delay at all and to take the votes later on.

Mr. Mancini: Are we going to vote sentence by sentence? Is that what we are going to do? We have to know whether we are going to vote sentence for sentence.

Mr. Martel: Why do we not go word by word?

Mr. Chairman: Do I have the agreement of the committee to withhold the votes until the end of the argument? Is that what you want to do?

Mr. Mancini: I would like to know--

Mr. Chairman: We are in committee, but we are getting a little loose for my taste, I will tell you that.

Mr. Mancini: We want to co-operate with the chair and try to be expeditious if we can, but I would like to know one thing. Are we going to go over my colleague's amendment or motion word by word?

Mr. Chairman: Yes, that is what we are doing. I can do it any way you want.

Mr. Mancini: Okay. If we are going to vote sentence for sentence, then I think we should have the right of knowing that.

Mr. Chairman: Right now what you have is a motion to adopt the wording proposed by Mr. Bossy, and before you right now you have an amendment by Mr. Warner to delete certain words. Are there any other amendments?

Mr. Sterling: We would vote for the amended paragraph if there was also included in that paragraph a statement that Mr. Gillies did not entrap or lead the server into the committee room to serve those papers.

Mr. Martel: Oh, come on. Now you are moving right back to where we were. It is not factual; we do not know.

Mr. Chairman: Just hold on a minute. Do I have an amendment to that effect or not?

Mr. Sterling: I will try to put the wording down.

Mr. Martel: Jesus Christ, I cannot believe this.

Mr. Chairman: Okay. We will stand that down and take it as notice that an amendment is coming. Are there any further amendments that anyone wishes to make? If not, I do not have very many choices left here. We can agree to set aside the vote until later, if that is your pleasure, to give Mr. Sterling the opportunity to draft his amendment. The only choice I would have would be then to move back to the staff report and to go through that recommendation by recommendation. Is that an agreeable way to proceed?

Okay, on the first recommendation, which is that the House--

Mr. Martel: Wait a minute. Hold it.

Mr. Chairman: Yes?

Mr. Martel: What are you going to do with that second paragraph?

Mr. Chairman: I have heard no amendments. It stands. I have had a request to stack the votes and take them at the end of the session. That is what I am going to do.

Mr. Mancini: I made a request to have them stacked because it appeared to me at that moment that there were going to be amendments for every particular--

Mr. Chairman: You have now had an indication that there will be at least one other amendment put.

Mr. Mancini: So he has an amendment to the second paragraph too.

Mr. Chairman: Yes.

Mr. Mancini: We have to know what is happening before we can vote.

Mr. Warner: Do not rush into anything.

Mr. Chairman: You are testing my patience. Do you want to adjourn for 10 minutes to allow Mr. Sterling to draft his amendment? Okay.

The committee recessed at 2:51 p.m.

15:09

Mr. Chairman: I see a quorum. Do we have an amendment from Mr. Sterling?

Mr. Sterling: Yes, Mr. Chairman.

Mr. Chairman: Mr. Sterling moves that paragraph 1 of the amendment by Mr. Bossy be amended by adding thereto, "The committee concludes that Mr. Gillies did not arrange the service which constitutes the breach of privilege."

Further, Mr. Sterling moves that paragraph 2 be amended by striking out everything after the first sentence and including the following to replace it, "The committee is unclear as to the responsibility for the breach of privilege."

I will take those as two amendments and set them aside, if it is agreeable, proceed with the staff report, go through those three recommendations and then come back to this motion. Is that all right?

The first recommendation is, "The House take no action against any individual involved in this matter." Is there any discussion on it? Those in favour of the recommendation? Those opposed? That carries.

The second recommendation is a rather lengthy one on section 38 of the Legislative Assembly Act. The committee recommends that:

"Section 38 of the Legislative Assembly Act be repealed and the following substituted therefor:

"38. No person shall make a personal service that is required or authorized by law in a civil matter upon another person,

"(a) in the Legislative Building;

"(b) in a room or place in Ontario in which a duly constituted committee of the assembly is meeting; or

"(c) in an office of a member of the assembly, other than a constituency office, that is situate outside the Legislative Building, and that is designated by the Speaker for the purposes of this section.

"Paragraph 11 of subsection 45(1) of the Legislative Assembly Act be repealed and the following substituted therefor:

"11. Making a service upon a person in contravention of section 38.

"Section 39 of the Legislative Assembly Act be amended by striking out 'the periods mentioned in section 38' and inserting in lieu thereof 'a session of the Legislature or during the 20 days preceding or the 20 days following a session.'

Is there any discussion on that recommendation?

Mr. Mancini: As I said yesterday, I believe we should separate our proposed changes to the Legislative Assembly Act. What I would like to recommend, because this is a very important matter, is for us to prepare something and then take it back to our caucuses. We have the information prepared, so at least half of that has been done.

I say to the members, the Legislative Assembly Act has served us for a long time and the privileges that members enjoy have been enjoyed for a very long time and they are being altered somewhat. Before I can speak for all my colleagues in the Liberal caucus, I believe I should give them at least a few minutes to consider what we are doing.

I do not think there is any rush or any hurry to get our views about the Legislative Assembly Act and proposed changes into the chamber. We can do that once we get back. We are all going to have caucus meetings in the very near future. If you want to set a deadline on when we have to report to you and make a decision, that is fine. If we have not been able to get it to our caucuses on our own initiative, then that is going to be our problem and we will have to deal with that ourselves.

I am not trying to unduly delay what we want to do. I am only asking the members to give us a little time so that our colleagues have a chance to review it. I will abide by the committee's wishes as to the timing.

Mr. Chairman: There are several ways we could do this. First of all, we could not put this recommendation in the report. That is possible.

Second, you can put it in the report and, at the time the report is debated, the caucuses would all have had ample notice and copies of it and they can put their caucus positions there. That is a second option.

I guess the third option is to delay the submission of the report totally, pending some review by the caucuses.

Mr. Mancini: No, Mr. Chairman. I do not think you understood me. I want to separate--

Mr. Chairman: I am pointing out that there are at least three or four ways to do the separation, however you want to do it. You can put through this report, let it stand in Orders and Notices and the caucuses will take that as notice and have their chance to deal with it; you could not put this in the report and go back to your caucuses; whichever way you want to do it. What is your pleasure?

Mr. Mancini: I would rather have it not in the report right now.

Mr. Chairman: Okay. Is there general agreement on that?

Mr. Warner: No. I would ask Mr. Mancini to reconsider this. As a committee, we are attempting to make recommendations. If, for example, the government or the three parties agreed with recommendation 2 about changes to the Legislative Assembly Act, the government then in turn would have to introduce the appropriate legislation.

All we are doing is identifying an area of the assembly act which we believe, or at least I believe, requires clarification. That particular section, it seems to me, has to be written in such a way that it cannot be misunderstood. It is a part of what we have dealt with. It is a part of all of the confusion of events. Included in that, of course, were the contrary legal opinions that were rendered with respect to service, and we have taken exception to that. I think it is important.

As members of the committee, naturally, you can voice your opinion. We are living in an era, we understand, where back-benchers have greater latitude than they have had in days gone by. This may go back to our caucus and it may say it is not important or necessary or it does not agree with it or whatever. All of that will unravel as we get closer to whenever the report is debated in the House.

It is a report and it is not the actual legislation. Quite frankly, I think it is an important part of what we have been dealing with and it deserves consideration.

Mr. Chairman: Okay. Is there any further discussion on this point?

Mr. Sterling: Maybe I could just ask a question and maybe the clerk or Mr. Eichmanis could answer. As I understood this, in my view, looking at section 38 and after everything I have heard during these hearings, this does not confine our privilege in any way. It does not take anything out of anything we enjoyed before. In fact, is it not correct that it is extending the areas?

Clerk of the Committee: Section 38 will be removed.

Mr. Sterling: Yes, but I think everybody has acknowledged that you can still be served civilly during a session period. We are not really losing anything by dropping section 38. All we are doing is making clear where the service can or cannot be and we are actually extending the areas where some lawyers claimed you could serve. In other words, we are saying that if you have an office in this building or in the Whitney Block, you will not be able to be served and it will be clear in black and white.

Mr. Chairman: I think it is not a recommendation to extend privilege or anything like that. It is an attempt to clarify and identify the means by which privilege would apply. I guess the most significant change would be

allowing the Speaker to designate an office as being a legislative office, whereas we now have a rather cumbersome process of doing that.

I sense that the committee wants to vote on this recommendation. You can vote against it if you like, but I am going to leave it in and let it stand. Is there any further debate on the second recommendation? Those in favour? Any opposed? The recommendation carries.

The third one is what might be called the notice provision. "A statement with respect to the service of process in the precincts of the House be circulated to all members of the assembly and their staff, the staff of the Office of the Assembly, all deputy ministers, and process servers in the province and that the statement also be circulated to all police forces by the Solicitor General and that the Law Society of Upper Canada inform the legal profession" etc. That is the recommendation on the last page, and we go on to recommend the wording of the statement.

Is there any debate on this matter? Those in favour? Five. Those opposed? It carries.

Now we can go back to the motion by Mr. Bossy.

Mr. Martel: Did we carry the fourth part, the statement proposed in recommendation 3?

Mr. Chairman: Yes, we did.

Mr. Martel: Fine. I just wanted to make sure.

Mr. Chairman: We will go back to the motion proposed by Mr. Bossy. As the first order of business, I will take Mr. Warner's amendment to strike certain words in the first section, the words beginning with "Contrary" and ending with "committee," so that the sentence would now begin--

Mr. Sterling: I am sorry. Does recommendation 4, the statement--

Mr. Chairman: Yes, that just carried.

Mr. Sterling: Yes. Does that still hold in place prior to an amendment to the act? No, it would not.

Mr. Mancini: You just voted in favour and you are not even sure what you voted in favour of.

Mr. Villeneuve: Clarification always helps.

Mr. Mancini: You should have the clarification before you vote on an amendment, not after you vote on it.

Mr. Sterling: I am for both of those.

Mr. Mancini: What kind of lawyer are you?

Mr. Chairman: Okay. Just to review it, the recommendation makes it subject to the Legislative Assembly Act, so that any subsequent changes to the act would alter that somewhat. It really has no real consequence since the recommendations are twofold: first, that a notice go out to those parties, and second, we are recommending a draft of what would be contained in that notice.

Those are the two recommendations. It is subject to the Legislative Assembly Act, so that if there are changes, there would be changes made to it.

Mr. Sterling: As I understand it, this draft assumes that the Legislative Assembly Act would be changed.

Mr. Chairman: Yes.

Mr. Sterling: There would be a different draft if things were staying at the status quo.

1520

Mr. Chairman: Yes. Back to Mr. Bossy's motion. The first amendment up is Mr. Warner's to delete certain words from the first paragraph. Those in favour of Mr. Warner's motion?

Motion agreed to.

Mr. Chairman: The second one up is going to be Mr. Sterling's amendment. May I have copies of that?

Mr. Sterling moves that paragraph 1 of the amendment by Mr. Bossy be amended by adding thereto, "The committee concludes that Mr. Gillies did not arrange the service which constitutes the breach of privilege." Is there any debate on that amendment?

Mr. Sterling: Yes, Mr. Chairman.

Mr. Mancini: Maybe we can get Mr. O'Connor in to help us out.

Mr. Chairman: Go ahead.

Mr. Sterling: Since we are commenting in the first paragraph on the evidence of the legal firm of Stikeman, Elliott and drawing a positive conclusion in its regard, and then there is an attempt--and I cannot tell what is going to happen with regard to my second amendment--in the second paragraph there is basically apportioning responsibility to Stikeman, Elliott and apportioning responsibility to Mr. Gillies and his staff.

I think it is important for the committee to clarify in the first paragraph what it was driving at in terms of saying, "Stikeman, Elliott, we know you did not intend to intimidate." I think it only fair that you say then to Mr. Gillies, "We understand, Mr. Gillies, what happened is that there was some responsibility, but we are satisfied through the evidence you have given to this court that you did not entrap or did not arrange this service to take place in the committee room." So it is a balance off.

The way the motion is put by Mr. Bossy is that there is a positive for Stikeman, Elliott in the first paragraph. There is no positive for Mr. Gillies in the first paragraph, but there is a negative for Stikeman, Elliott in the second paragraph and there is a negative for Mr. Gillies in the second paragraph. So Mr. Gillies loses. Actually, there is a negative for Mr. Gillies in the first paragraph as originally put forward by the Liberal caucus, so in terms of what the words say, Mr. Gillies is guilty and there is no acknowledgement that the committee has accepted his testimony.

Mr. Chairman: Any further debate on the amendment? Those in favour of Mr. Sterling's amendment?

Ms. Fish: Recorded.

Mr. Chairman: Do you want a recorded vote on that?

The committee divided on Mr. Sterling's amendment, which was negatived on the following vote:

Ayes

Fish, Hennessy, Sterling, Villeneuve.

Nays

Bossy, Mancini, Martel, Miller, G. I., Newman, Warner.

Ayes 4; nays 6.

Mr. Chairman: We have another amendment from Mr. Sterling.

Mr. Sterling moves that the following replace everything after the first sentence in the second paragraph, "The committee is unclear as to the responsibility for the breach of privilege."

Debate?

Mr. Sterling: The motion basically says that, notwithstanding the fact that we heard evidence from a number of people who tried to spread the blame around to other areas or other kinds of people--Stikeman, Elliott came in and indicated they thought a process server was adequate. Mr. Clamp received some information from Stikeman, Elliott but did not pass it along to Mr. Patton. Mr. Patton, it appeared to me, anyway, from his evidence, was probably not trained adequately enough to deal with the particular circumstance he was thrust into in coming here.

There was some evidence by Ms. Artmont and there was a feeling by members of the committee that has been stated before that, while she knew about it three days prior to the particular service taking place, for some reason, she has been blamed for not speaking to Mr. Gillies.

Mr. Gillies is somehow being blamed because he did not take responsibility for rejecting service or doing something in advance, even though he did not know about it.

Therefore, in terms of drawing the conclusion and singling out responsibility on two shoulders, I am saying it is unclear, in my view, who is responsible and to what degree that responsibility lies. The way the paragraph is now written, I do not know whether Stikeman, Elliott is responsible to the tune of 90 per cent, Mr. Gillies five per cent, Ms. Artmont five per cent or whatever it is. I am just saying that since we are not dealing with trying to go to the credibility of all the witnesses' statements, the fairest thing to say is that the committee is just unclear as to who is responsible for the breach in the final analysis.

Mr. Chairman: Okay. Any further debate on the amendment?

Ms. Fish: Recorded.

The committee divided on Mr. Sterling's amendment, which was negatived on the following vote:

Ayes

Fish, Hennessy, Sterling, Villeneuve.

Nays

Bossy, Mancini, Martel, Miller, G. I., Newman, Warner.

Ayes 4; nays 6.

Mr. Chairman: Are there any further amendments to the committee's report?

Mr. Sterling: Yes, Mr. Chairman. Since, when we went through the statement of facts at the beginning, we did not expect an amendment of this sort to be placed in the report, it was our view that we would let the statements go as they were. There is one part of that statement of fact which I think needs qualification, and that is the statement at the bottom of page 5.

I would like that area amplified. The testimony was where in fact Mr. Patton walked over to Ms. Artmont. I believe that is already in the testimony, and it was just prior to that testimony. Also, the fact that Mr. Patton gave that particular statement--"I believe you are looking for me?"--in evidence when he was led by a member, Mr. Mancini. In fact, he only agreed to that statement. It was in his affidavit. They were not words that flowed out of his mouth, and therefore it was, in my view, not a spontaneous statement as such, so I think it needs to be qualified in that regard.

Mr. Chairman: I have listened to you very carefully and I am still puzzled as to how you want to qualify it.

Mr. Sterling: If you look at the evidence around it--

Mr. Chairman: No, a little more specific, Normie. Do you want more words? Do you want the Hansard quoted?

Mr. Sterling: Yes, that is right. That is what I want.

Mr. Chairman: What do you want? I gave you three choices, so you cannot answer "Yes." It is a relatively simple matter to give us an indication of which sections of the Hansard for that day you would like in.

Mr. Martel: Put it all in.

Mr. Chairman: This is M-15? That is the Hansard reference?

Mr. Sterling: That was Thursday?

Mr. Chairman: Thursday the 19th?

Mr. Sterling: I believe Mr. Patton said, on page 2 of his affidavit: "I believe the woman asked me whether I was looking for her; in any event, I walked across the aisle and sat down beside her."

Ms. Artmont's testimony is a little different in that area and I think you should quote from her affidavit as well on the matter.

Mr. Chairman: Can you give us a little better hint as to what you would like put in here?

Mr. Sterling: First of all, I do not even know if it is relevant at all.

Mr. Chairman: Would it be easier to strike certain sections from this?

Mr. Sterling: I would just strike that whole thing out.

Mr. Chairman: What do you want stricken?

Mr. Sterling: "Both Mr. Patton and Ms. Artmont sat at the back of the"--

Mr. Mancini: Mr. Chairman, on a point of order: We went through the chronology of events twice, once yesterday and once today. I believe we agreed, as a committee, to accept the chronology of events before we proceeded with all these other motions. I am not so sure that it is entirely in order now, at the last moment before we wrap up our hearings, for a member of the committee to say, "Let us go back over the chronology of events, because there is a word or two there that I may not like."

Mr. Martel: I want to make a suggestion. Go and write what you want and bring it back tomorrow morning, please.

Mr. Chairman: I was going to suggest to you, I am not quite sure we can get you a final draft for tomorrow morning. Can we? We can try.

Okay. We are in committee and I am going to give you this much latitude. We will try to have a final draft for you tomorrow at 10. If there are any further amendments you want, we will hear them, let me put it that way, but I also want to put the caveat in your ear that if it is a substantive amendment you are proposing and you come in here at 10 o'clock tomorrow morning and plunk it on the table, I do not think you have a snowball's chance in hell of getting anywhere with it.

If it is a correction of the record, a slight deletion, a measure of fairness, if you want to add some words out of Hansard or something else, I believe you could get away with that, but I would remind you that, technically, we went through the statements of fact twice. Ample opportunity was there to amend or to do whatever, and I am on thin ice by allowing you the opportunity to move motions in that regard. I think we can do it because we are in committee, but it kind of depends on the nature of the amendment.

Ms. Fish: Just to be helpful to staff with the redraft, the intention in the area that my colleague Mr. Sterling has noted would be to have a parallel form to what was done in the case of Clamp and Artmont where there appeared to be differences of opinion advanced in the testimony. We will find the reference for staff to assist in that regard. So that you are clear, it is a matter of one being quoted that evidence of the other person named is different.

Mr. Chairman: Mr. Bossy, you had a point?

Mr. Bossy: No, I just want to be really clear, because I did not hear--I might have missed it--that my amendment, as amended, carried?

Mr. Chairman: Yes.

Ms. Fish: Oh no, I am sorry, we did not vote on the motions.

Mr. Chairman: Do you want to have a formal motion on Mr. Bossy's motion, as amended?

Ms. Fish: Yes, I do; recorded.

The committee divided on Mr. Bossy's motion, as amended, which was agreed to on the following vote:

Ayes

Bossy, Mancini, Martel, Miller, G. I., Newman, Warner.

Nays

Fish, Hennessy, Sterling, Villeneuve.

Ayes 6; nays 4.

Mr. Warner: Tomorrow, is it your intention to deal with the concern brought by Mr. Laughren?

Mr. Chairman: I will put that on the agenda for tomorrow morning for an initial discussion, but I would take it that before we would conclude we would want to ask Mr. Laughren to attend, if he can.

Mr. Warner: Okay, and maybe a discussion on budget for the committee?

Mr. Chairman: That is possible, but first, I would very much like to finalize this report tomorrow. I would remind you that the New Democrats have a caucus meeting in the afternoon and so, by our previous agreements, we will sit from 10 and no later than 12.

Mr. Bossy: There is no sitting tomorrow afternoon?

Mr. Chairman: No.

The committee adjourned at 3:34 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' PRIVILEGES

THURSDAY, APRIL 9, 1987

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)

VICE-CHAIRMAN: Mancini, R. (Essex South L)

Bossy, M. L. (Chatham-Kent L)

Martel, E. W. (Sudbury East NDP)

Morin, G. E. (Carleton East L)

Newman, B. (Windsor-Walkerville L)

Sterling, N. W. (Carleton-Grenville PC)

Treleaven, R. L. (Oxford PC)

Turner, J. M. (Peterborough PC)

Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:

Lane, J. G. (Algoma-Manitoulin PC) for Mr. Treleaven

Miller, G. I. (Haldimand-Norfolk L) for Mr. Morin

Clerk: Forsyth, S.

Staff:

Eichmanis, J., Research Officer, Legislative Research Service

Madisso, M., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday, April 9, 1987

The committee met at 10:18 a.m. in room 230.

MEMBERS' PRIVILEGES
(continued)

Mr. Chairman: Okay. I call the committee to order. You have in your possession now the redraft from yesterday. I will point out for the record that there is an additional phrase that has been inserted on what is now page 7, in about the middle of the page, adding the words "Mr. Patton approached Ms. Artmont." That is the only change from what you saw yesterday or changed by way of amendment.

It would appear to me that we are at the stage where we are ready for a motion to adopt the report. If there are any other amendments, they would be in order now.

Mr. Martel: I think I might find a sentence I would like to put in somewhere. I am not sure what the sentence is and I am not sure where.

Mr. Chairman: Can I have a motion to adopt the report?

Interjections.

Mr. Warner: I so move.

Mr. Chairman: Mr. Warner moves the adoption of the report. Any discussion?

Mr. Sterling: I feel obliged to indicate to the committee that our caucus will not be supporting the report because of the change in the recommendations due to the motion by Mr. Bossy yesterday. We feel that, based on the evidence that was made before this committee and based on the actions of this committee prior to reconvening this month from February, it was the intention of this committee not to look behind the motivations, to judge the testimony of a member.

Our caucus's feeling is that by the inclusion of those paragraphs on page 9, in particular the paragraph just proceeding the first recommendation, we cannot support the report. We can only surmise from the form of Mr. Bossy's amendment, as it was originally put, along with what is contained in this paragraph, that it was politically motivated. It was motivated--

Mr. Mancini: Why do you not get off it? What kind of nonsense is that?

Mr. Turner: You understand that, Remo--

Mr. Mancini: You know that is nonsense to accuse my colleague--

Mr. Sterling: It was motivated to try to stick the knife into Mr. Gillies. It has has nothing to do with--

Mr. Martel: Mr. Chairman, is he allowed to impute motives to other people under the standing rules of the Legislature?

Mr. Chairman: Well, yes, I think you are getting pretty close to the line there.

Mr. Sterling: I believe the statement made by Mr. Warner, in view of the motion that was originally put by Mr. Mancini to extend the hearings to look into motivation by the various witnesses and the various people involved, is exactly what has been transformed into that paragraph.

Mr. Mancini: That is not true, Mr. Chairman, and he is imputing motives again. He has done it again.

Mr. Sterling: I am only referring to--

Mr. Mancini: Either we are going to get him to stop it or the committee is not going to proceed very properly.

Mr. Chairman: Say what you want to say and get it on the record, will you?

Mr. Sterling: Okay. That is what I am trying to do.

Therefore, we just feel that paragraph is patently unfair to Mr. Gillies. The summary of the evidence as we saw it was that the committee was unclear as to who was responsible for the ultimate breach. Our caucus believes it was more a matter of chance that the particular breach took place in that room due to the fact that there was an inexperienced server who walked into the room, who was not properly instructed by his principal, and whose principal was not properly instructed by the law firm that was involved.

Through the evidence of Ms. Artmont, there were several places where she could meet with somebody to talk about receiving a legal letter or whatever. To impute a responsibility on the defendant in a lawsuit as to whether service was properly done when it is the plaintiff's job to see that it is properly done is extremely bizarre in our estimation. We just cannot support imputing that responsibility on either Mr. Gillies or Ms. Artmont.

Mr. Martel: For absolute crap, I have never heard a bigger pile. I want to put that as bluntly as I can to my friend because in fact what we wrote yesterday is precisely what happened. You people have taken the position for a long time that maybe there was intimidation by the legal firm. One only has to check the record. That was the position taken by your party, that it was intimidation. We said that the firm probably goofed.

We are also saying--and you cannot deny the fact--that Ms. Artmont told that server to come to room 151 to serve the papers. That is what that says. You can put on any other interpretation you want, but that is what that says; that is how it reads. I read as well as you, and that is what it says. It does not attribute blame. What you tried to do all day yesterday was shift. I can understand your trying to bail your colleague out. I am not trying to dig him in as desperately as you are trying to bail him out in everything that has been said for the last day and a half. You tell me what is factually wrong in that statement that did not occur in the way that it is there. One only has to look at the two amendments you tried to move last night; they were supercilious, to say the word, because we did not want to judge motives. If I were going to judge motives--

Mr. Sterling: Why are you blaming--

Mr. Martel: We are not blaming anybody.

Mr. Sterling: Why are you calling the responsibility equally that of Mr. Gillies and the law firm's?

Mr. Martel: They simply could have avoided it, if you want to talk about motive, by saying, "Here is a law firm we have heard from before--that has served a notice on us before and they are coming to see us now." We do not want to put it in. We do not want to attribute the motives of Ms. Artmont or try to determine what they are, why she did not tell Gillies from Monday morning until Thursday morning. We did not put any of that in. We left it out. We said we would not deal with motives or try to interpret the motives of other people. I know what my friends on the other side of you wanted to say too. They have come down a little.

I said when we started these hearings, "You know, my friend, some of the stuff you throw always sticks; you cannot get rid of it all when you start throwing it." There is nothing in there that is not factual. If you tell me that Ms. Artmont and Mr. Gillies did not know they were coming--are you telling me that they did not know they were getting some paper, some document from some lawyer or a server?

Mr. Sterling: Whose responsibility is it? Why is the defendant responsible to do anything?

Mr. Martel: If I were going to have a lawyer come here and see me, a law firm that in fact had threatened me two months before, I would have been down to see the Speaker at nine o'clock. I could not have got into the building fast enough to get down there to see the Speaker to see what my rights were. Do not give me that nonsense.

We are not trying to blame anybody. That is why we are not affixing blame. We are saying they are both responsible to some degree for what happened. One could have avoided it; the law firm should have been smart enough not to do it. If that is not what happened, then you tell me what happened that is different, otherwise the whole line of defence that you have built since yesterday is hokum. We know what it is for. We have been around this business long enough. You are not fooling anybody by all the pious words, because there is nothing there that is improper. There is nothing there that did not happen. If you are saying it did not happen that way, then you tell me how it happened. You differ with it, otherwise it is totally factual and it does not judge anyone. I am sick and tired of listening to it.

Mr. Chairman: Any further debate?

Mr. Sterling: I do not know if he wants me to respond to him or not.

Mr. Chairman: I do not think so.

Motion agreed to.

Mr. Sterling: We will be putting in a dissenting report.

Mr. Chairman: As usual, anybody can put in a dissenting report. We have accommodated that before. The only qualification is that we are not going to delay the submission of the report--obviously this one will not get tabled

until the House resumes--so we would ask that you do that within the next couple of days.

Any further business that you want to transact this morning?

Mr. Warner: Did you want to spend a few minutes on the complaint by Mr. Laughren?

Mr. Chairman: We had prepared for you yesterday the brief Hansard on Mr. Laughren's point of privilege. I would like a little direction from you. Normally, what I would say would be appropriate is that we would invite Floyd in to address the committee. Unfortunately, he is not available today. If we have your concurrence, what we will do at the first opportunity is invite him to attend.

I have read the Hansard. I had a lot of sympathy obviously for the fact that another chairman of a committee took some abuse. I am a bit at a loss to figure out exactly what it is we could do of a positive nature, but I think perhaps we ought to consider the problem that is here and what might be done.

1030

If you read the Hansard from yesterday, you will find out that the chairman of the committee took some abuse for a bill that was before the committee. It seems to me that if you could identify the individuals who abused the chairman, you might be able to do something in that regard. You could be creative and put out newspaper advertisements saying it is not nice to abuse a committee chairman, or you could make it a grievous offence to do that. But I think what we will do in this instance is simply invite Mr. Laughren to attend to make his point here once again. We will turn our minds to what we might do to offer some measure of protection.

At this stage, I am not sure there is much you could do that would offer anything of a positive nature, but I would say that if you did not at least take note of it, you might be encouraging some kind of organized campaigns. The particular irony here is that this is someone who is chairing a committee. The bill is not his bill; it is a government bill. I am not even sure whether Mr. Laughren voted for or against the bill. He was simply doing his job as a committee chairman. If the practice went totally unnoticed and you got into some kind of organized campaigns, you would have to either up the stipend for chairing committees or provide chairmen with armed guards or something.

Mr. Martel: It depends on who the chairman is.

Mr. Chairman: Yes. Give me back those expense forms.

Is that an agreeable way to proceed? We will leave this on our agenda until the House resumes, and we will invite Mr. Laughren to attend and see whether there is something we can do. All right.

Is there any further business?

Mr. Warner: Are we sitting the first Wednesday back? If so, what will we be dealing with?

Mr. Chairman: I am corresponding with the House leaders, seeking some sitting time during the first week or so of the new session, so we can finish Bill 34. We have four or five matters that were stood down for a vote,

and we should be able to wrap up that bill in about one afternoon. We will be engaged in the thrills of a throne speech for a week or so. We might be able to squeeze out an afternoon, but we will need the concurrence of the House leaders. We are putting in that request, and you may anticipate that if it is not the first Wednesday, it may be the second Wednesday.

Mr. Warner: Okay.

The committee adjourned at 10:32 a.m.

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